

INTERAGENCY AGREEMENT

AMONG

TENNESSEE DEPARTMENT OF EDUCATION,

TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION

Bureau of TennCare, and

Division of Mental Retardation Services,

TENNESSEE DEPARTMENT OF HEALTH,

TENNESSEE DEPARTMENT OF HUMAN SERVICES, and

TENNESSEE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL

DISABILITIES

November 1, 2000

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Article One

Parties to Agreement

This Interagency Agreement (Agreement) is entered into by the Tennessee Department of Education (DOE), the Tennessee Department of Children's Services (DCS), the Tennessee Department of Finance and Administration (TDFA) Bureau of TennCare and Division of Mental Retardation Services (DMRS), the Tennessee Department of Health (DOH), the Tennessee Department of Human Services Division of Rehabilitation Services (DHS/DRS), and the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD). This includes all offices, divisions, bureaus, units and programs referred to in this Agreement for which each Department provides oversight.

Article Two

Purpose

This Interagency Agreement is intended to fulfill the requirements of Part B and Part C of the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.* (IDEA). The purpose of this Agreement is to identify and define the financial responsibilities of the Parties to this Agreement and to facilitate the provision and coordination of services for all infants, toddlers, children, youth and adolescents who are IDEA eligible. This Agreement formalizes policies, procedures, and fiscal responsibilities of the Parties. For purposes of this Interagency Agreement, the term "child with a disability" shall always be defined according to 34 CFR §300.7(a) unless otherwise specified.

Article Three

Definitions

For purposes of this Interagency Agreement,

1. **"Assessment"** for Part B purposes, means the collection and integration of information to determine a student's current level of emotional, behavioral, academic, and intellectual functioning, educational needs, and strategies for remediation to promote effective treatment. *Special Education Dictionary*. For Part C purposes, it means the ongoing procedures used by qualified personnel throughout the period of a child's eligibility under Part C to identify: (a) the child's unique strengths and needs and the services appropriate to meet those needs; and (b) the resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability. *34 CFR §303.322(b)(2)*.
2. **"Behavioral health organization" (BHO)** means a type of managed care organization approved by TennCare or by a designee of TennCare to deliver mental health and substance abuse services to TennCare enrollees. *Tenn. Rule 1200-13-12-.01(2)*.
3. **"Child Find"** means the collective name for Tennessee's policies and procedures, coordinated with all other major efforts conducted by Participating Agencies, designed and implemented to ensure that all children with disabilities (including children with disabilities attending private schools; underserved populations such as children in rural and urban areas;

and highly mobile children with disabilities (e.g. migrant and homeless children) residing in Tennessee, regardless of the severity of their disability, and who are in need of early intervention services or special education and related services, are identified, located, and evaluated. Child Find includes the process developed and implemented to determine which children are currently receiving early intervention services or special education and related services. *34 CFR §300.125 & 303.321.*

4. **“Child with a disability”** for IDEA purposes, means a child evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, an emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, deaf-blindness, or multiple disabilities consistent with IDEA and in need of special education and related services. *34 CFR §300.7(a).*

5. **“Contract facility”** for DCS purposes, means a facility that contracts with the State to provide treatment and/or residential services to children in DCS custody. *DCS Glossary p. 7.*

6. **“Custody”** means the control of actual physical care of the child and includes the right and responsibility to provide for the physical, mental, and moral well-being of the child. *TCA §37-1-102(b)(8).*

7. **“Detention center”** means a place of confinement for juveniles in a secure or closed type of facility which is under the direction or supervision of the court or a facility which is designated by the court or other authority as a place of confinement for juveniles. *TCA §37-1-102(13).*

8. **“Developmental center”** means a facility certified by the Department of Health or the Department of Mental Health and Developmental Disabilities as an ICF-MR, which may be further defined in TCA Title 33.

9. **“Early intervention system”** means the total effort in Tennessee that is directed at meeting the needs of children eligible under IDEA Part C and their families. *34 CFR §303.11.*

10. **“Early Periodic Screening, Diagnosis and Treatment”** (EPSDT) means screening in accordance with professional standards, interperiodic screening, and diagnostic services to determine the existence of physical or mental illness or conditions in recipients under age 21; and health care, treatment, and other measures described in 42 USC §1396a(a) to correct or ameliorate any defects and physical and mental illnesses and conditions discovered. *Tenn.Rule 1200-13-12-.01(38).*

11. **“Education records”** mean those records, files, documents, and other materials which contain information directly related to a student and are maintained in an educational agency or institution or by a person acting for such agency or institution which are not specifically excluded under the five categories of exceptions set out in 20 USC §1232g(a)(4)(B) (FERPA - Exceptions).

12. **“Emergency medical condition”** for TennCare purposes, means a medical condition that manifests itself by symptoms of sufficient severity (including severe pain) that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in: (a) placing the person’s health (or, with respect to a pregnant woman, potentially her unborn child’s) in serious jeopardy; (b)

serious impairment to bodily functions; or (c) serious dysfunction of any bodily organ or part. *Tenn. Rule 1200-13-12-.01(12)*.

13. **“Evaluation”** for the purposes of Part B, means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. *34 CFR §300.500(b)(2)*. For Part C purposes, it means the procedures used by appropriate qualified personnel to determine a child’s initial and continuing eligibility, consistent with the definition of “infants and toddlers with disabilities” in Tennessee, including determining the status of the child in each of the following developmental areas: (a) cognitive development; (b) physical development, including vision and hearing; (c) communication development; (d) social-emotional development; and (e) adaptive skills. *34 CFR §303.322(b)(1)*.

14. **“Family Educational Rights and Privacy Act”** (FERPA) means the collective name for federal legislation prohibiting educational agencies or institutions from releasing education records of students unless consistent with the terms of the Act. *20 U.S.C. § 1232g*.

15. **“Foster care”** means the temporary placement of a child in the custody of DCS or any agency, institution, or home, whether public or private, for care outside the home of a parent or relative (by blood or marriage) of the child, whether such placement is by court order, voluntary placement agreement, surrender of parental rights or otherwise. Foster care shall cease at such time as the child is placed with an individual for the purpose of the child's adoption by the individual or at such time as a petition to adopt is filed, whichever occurs first, or at such time as the child is returned to or placed in the care of a parent or relative. *TCA §37-2-402(5)*.

16. **“Foster home”** means a private home which is approved by DCS or other licensed child-placing agency and provides full time care for up to six (6) children at one time. This maximum includes birth, adopted or foster children. *DCS Glossary p. 14*.

17. **“Free appropriate public education”** (FAPE) means regular and special education and related services which:

- (a) Are provided at public expense, under public supervision and direction, and without charge to the parent;
- (b) Meet the standards established by state law, including the requirements of IDEA Part B and the *Rules, Regulations and Minimum Standards for the Governance of Tennessee Public Schools*, issued by DOE;
- (c) Include preschool, elementary school, and secondary school (including appropriate vocational, career or work experience education) and
- (d) Are provided in conformity with an individualized education program (IEP). *34 CFR §300.13*.

18. **“Grier Revised Consent Decree”** means the consent decree *Grier v. Wadley*, U.S. Dist. (M.D. Tenn.) Civil Action No. 79-3107 entered October 26, 1999.

19. **“ICC”** means the State Interagency Coordinating Council. *34 CFR §303.600*.

20. **“Individuals with Disabilities Education Act”** (IDEA) means the collective name for federal legislation codified at 20 USC §1400 *et seq.* as amended, providing federal funds for special education and related services and early intervention services to children with disabilities in accordance with standards set by the Act.

21. **“Individualized Education Program”** (IEP) means a written statement that is developed, reviewed, and revised in a meeting of the IEP Team, in accordance with 34 C.F.R. §§ 300.341-300.350 (IEP), for a child with a disability who qualifies for special education and related services under IDEA Part B.

22. **“Individualized Education Program Team”** (IEP Team) means a statutorily defined group of individuals under 34 C.F.R. § 300.344 (IEP Team), with the responsibility for determining eligibility and/or special education and related services under IDEA Part B.

23. **“Individualized Family Service Plan”** (IFSP) means a written plan for providing early intervention and other services to an infant or toddler with a disability and his family under IDEA Part C which:

- (a) Is developed jointly by the family and appropriate qualified personnel involved in the provision of early intervention services;
- (b) Is based on the multidisciplinary evaluation and assessment of the child and the assessment of the child’s family;
- (c) Includes services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child;
- (d) Contains a statement of the natural environment in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment; and
- (e) Is reviewed by interactive means acceptable to all parties, and at least on a six month interval. *34 CFR §303.340(b) & 303.344.*

24. **“Individual Support Plan”** (ISP) means a written document central for planning, providing and reviewing the supports and services to be provided by DMRS through its contract agencies for those in the Home and Community Based Services (HCBS) waiver. *DMRS’s Family Handbook p. 30.*

25. **“Infant or Toddler with a Disability”** means an individual birth to age three who qualifies for early intervention services under IDEA Part C because he/she:

- (a) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development; physical development, including vision and hearing; communicative development; social or emotional development; adaptive development; or
- (b) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; or
- (c) Exhibits developmental delays for which there are no standardized measures or for which existing standardized procedures are not appropriate for the child’s age or a given developmental area.

This child may, in accordance with procedures established by DOE, be deemed eligible by an Informed Clinical Opinion. *34 CFR §303.16.*

26. **“Intra-agency dispute”** means the inability of divisions, offices, bureaus, units or programs within a department or agency to agree as to which is responsible for coordinating services; providing appropriate services; paying for appropriate services or any other matter related to the department’s or agency’s statutory responsibilities.

27. **“Interagency dispute”** means any disagreement between two or more Participating Agencies concerning the responsibility for coordination of services, provision of appropriate

services, payment for appropriate services or any other matter related to this Agreement for an eligible child under IDEA Part B and C.

28. **“John B. Consent Decree”** means the consent decree *John B. v. Menke*, U.S. Dist. (M.D. Tenn.) Civil Action No. 0168, entered March 11, 1998.

29. **“Least restrictive environment”** means to the maximum extent appropriate, an environment where children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled. *34 CFR §300.550 (b)(1)*.

30. **“Local educational agency”** (LEA) means a public board of education or other public authority legally constituted within Tennessee for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of Tennessee, or for a combination of school districts or counties that are recognized in Tennessee as an administrative agency for its public elementary or secondary schools. *34 CFR §300.18(a)*.

31. **“Managed Care Organization”** (MCO) means an appropriately licensed HMO approved by the TDFA/Bureau of TennCare as capable of providing medical services in the TennCare program. *Tenn. Rule 1200-13-12-.01(24)*.

32. **“Medical assistance”** as used in the TennCare Rules and for purposes of this Agreement, means care, services, drugs, equipment, and supplies prescribed as medically necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, or interfere with or threaten some significant impairment and which are furnished in accordance with Title XIX of the Social Security Act (Medicaid) and T.C.A. §71-5-101 *et seq.* (Welfare-Programs and Services for Poor Persons-Medical Assistance). Such care, services, drugs, and supplies shall include services of qualified practitioners licensed under the laws of the State of Tennessee. *TCA §71-5-103(5)*.

33. **“Medical services”** means services provided by a licensed physician to fulfill the requirements of IDEA in order to determine a child’s medically related disability that results in the child’s need for special education and related services. *34 CFR §300.24(b)(4)*.

34. **“Medically necessary”** means services or supplies provided by an institution, physician, or other provider which are required to identify or treat a person’s illness or injury and which are:

- (a) Consistent with the symptoms or diagnosis and treatment of the person’s condition, disease, ailment, or injury; and
- (b) Appropriate with regard to standards of good medical practice; and
- (c) Not solely for the convenience of a person, physician, institution or other provider; and
- (d) The most appropriate supply or level of services that can safely be provided to the person. When applied to the care of an inpatient, it further means that services for the person’s medical symptoms or condition require that the services cannot be safely provided to the person as an outpatient.
- (e) When applied to enrollees under 21 years of age, services shall be provided in accordance with EPSDT requirements including federal regulations as described in 42 CFR Part 441, Subpart B, and the Omnibus Budget Reconciliation Act of 1989. *Tenn. Rule 1200-13-12-.01(26)*.

35. **“Natural environments”** for IDEA Part C purposes, mean settings that are natural or normal for a child’s age peers who have no disability. *34 CFR §303.12(b)(2)*.

36. **“Parent,”** for IDEA purposes, means—

- (a) A natural or adoptive parent of a child;
- (b) A guardian but not the State if the child is a ward of the state;
- (c) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare); or
- (d) A surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.515 (Surrogate Parents). *34 CFR §300.20(a)*.

A foster parent may act as a parent if—

- (a) The natural parent’s authority to make educational decisions on the child’s behalf has been extinguished under Tennessee law; and
- (b) The foster parent--
 - (i) Has an ongoing, long-term parental relationship with the child;
 - (ii) Is willing to make the educational decisions required of parents under the IDEA; and
 - (iii) Has no interest that would conflict with the interests of the child.

34 CFR §300.20(b).

37. **“Participating Agencies”** means the Tennessee Department of Children’s Services, the Tennessee Department of Education, the Tennessee Department of Finance and Administration/ Bureau of TennCare, and the Division of Mental Retardation Services, the Tennessee Department of Health (Part C only), the Tennessee Department of Human Services/Division of Rehabilitation Services (Part B only),, and the Tennessee Department of Mental Health and Developmental Disabilities.

38. **“Payor of last resort”** means the agency that has ultimate responsibility for providing a service for a child with a disability or his family after all other potential resources have been exhausted.

39. **“Permanency planning”** means the process of intervention and decisive casework on the part of the DCS case manager. Such intervention focuses on choosing the least restrictive permanent outcome for the child, i.e. return to parent, relative placement, adoption, independent living or permanent foster care, in a timely manner. *DCS Glossary p. 23*.

40. **“Personally identifiable information”** means the information that relates to or concerns an individual student. It includes but is not limited to the student’s name, the name of the student’s parent(s) or other family member(s), the address of the student or student’s family, a personal identifier such as the student’s social security number or student number, and a list of personal characteristics that would make the student’s identity easily traceable. *34 CFR §300.500(b)(3)*.

41. **“Primary care physician”** (PCP) means physicians who have limited their practice of medicine to general practice, or physicians who are Board Certified or Board Eligible in any of the following: Internal Medicine, Pediatrics, Obstetrics/Gynecology, or Family Practice. *Tenn. Rule 1200-13-12-.08(10)(b)(1)(I)*.

42. **“Primary referral sources”** means hospitals (including prenatal and postnatal care facilities), physicians, parents, day care programs, LEAs, public health facilities, other social services agencies, and other health care providers. *34 CFR §303.321(d)(3)*.

43. **“Regional Mental Health Institute”** (RMHI) means a mental health facility or institution of the State of Tennessee over which TDMHDD has exclusive jurisdiction and control. *TCA §4-3-1603(a)*.

44. **“Related services”** means transportation and such developmental, corrective, and other supportive services that are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. *34 CFR §300.24(a)*.

45. **“Residential facility”** means a facility that offers twenty-four (24) hour residential care as well as a treatment and habilitation component.

46. **“Runaway house/shelter”** means any house or institution, operated by DCS, giving sanctuary or housing to any person under eighteen (18) years of age who is away from home or the residence of his/her parent without the parent’s consent. *TCA §37-2-502(3)*.

47. **“School health services”** means services provided in school or at school sponsored events by a qualified school health nurse or other qualified health care professional. *34 CFR §300.24(b)(12)*.

48. **“Service coordinator”** means the individual appointed by a public agency or selected by the IFSP team and designated in the IFSP to carry out service coordination activities. Service coordinators shall have demonstrated knowledge and understanding about: IDEA eligibility; IDEA Part C; the nature, scope, and availability of services within the early intervention system; the system of payments for early intervention services; and other pertinent information. *34 CFR §303.22*.

49. **“Special education”** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including (i) instruction conducted in the classroom, in the home, in hospitals, in institutions, and in other settings; and (ii) instruction in physical education. *34 CFR §300.26(a)*.

50. **“Surrogate parent”** means a person appointed when a child is a ward of the state or when the parent or legal guardian is unable to be located after reasonable efforts by the public agency. For IDEA purposes, the surrogate parent may represent a child in all matters relating to: (a) the identification, evaluation, and educational/early intervention placement of the child; and (b) the provision of FAPE/early intervention services to the child. *34 C.F.R. § 300.515(a) & (e)*.

51. **“TennCare”** is the program by which the State of Tennessee provides medical assistance to persons eligible for Title XIX of the Social Security Act (Medicaid), to uninsured children under the age of nineteen (19), and to uninsured persons of any age who have been denied health insurance because of a health problem. References to TennCare shall also include

reference to the Bureau of TennCare, TennCare Partners, and any other agencies, public or private, contractors and subcontractors through whom TennCare provides medical benefits. *Tenn. Rules 1200-13-12-.01(3) & .02(a)*.

52. **“TennCare enrollee”** means any TennCare eligible person who has enrolled in a MCO authorized to provide services in the geographical area where the person resides. Persons enrolled in TennCare are automatically enrolled in the TennCare Partners Program and will be served by the BHO partnered with the MCO in which the person has enrolled. *Tenn. Rules 1200-13-12-.01(13) & 1200-13-12-.02(8)*

53. **“TennCare provider”** means an institution, facility, agency, person, corporation, partnership, or association which accepts, as payment in full for providing benefits to a TennCare enrollee, the amounts paid pursuant to an approved agreement with a MCO. Such payment may include fees, deductibles, copayments, special fees or any combination of these. *Tenn. Rules 1200-13-12-.01(28)*.

54. **“Tennessee Early Intervention System”** (TEIS) means a network of nine district offices established by DOE that provides access under IDEA Part C to early intervention services statewide. TEIS offers a wide range of services from which an individualized program can be designed to meet the unique needs of each child and family.

55. **“Transition services”** for IDEA Part B, means a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment including supported employment, continuing education, adult education, adult services, independent living, and community participation. *34 CFR §300.29 & Rehabilitation Act of 1973 as amended, §7(37)*.

56. **“Vocational rehabilitation services”** means any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. *Rehabilitation Act of 1973 as amended, §103*.

57. **“Youth Development Center”** (YDC) means a secure facility, operated by DCS, for those who have been adjudicated delinquent and meet the criteria established by DCS for placement at such facility. *TCA §37-5-103(16)*.

Article Four

IDEA PART B SERVICES

A. Tennessee Department of Education

a. Division of Special Education

1. DOE will coordinate the provision of services under this Agreement to ensure that children who are IDEA eligible receive FAPE in the least restrictive environment.
2. The use of an interagency agreement does not alter or diminish the responsibility of DOE to ensure compliance of all public agencies serving children with disabilities with the requirements of IDEA. This will be accomplished through compliance monitoring.
3. Each LEA will file with DOE an annual comprehensive plan for providing special education and related services to children with disabilities who reside within its jurisdiction. DOE will ensure that the comprehensive plan is in compliance with IDEA Part B and all state and federal statutes and regulations. It shall be the responsibility of the LEA or responsible state agency to determine eligibility, provide the appropriate special education and related services, and to fulfill the requirements of IDEA Part B for all children who are IDEA eligible. *34 CFR §300.320(a)*. If DOE determines that a LEA or responsible state agency is unable to meet its obligations under IDEA, DOE shall use IDEA Part B funds that would otherwise have been available to a LEA or state agency and provide or cause to be provided special education and related services directly to children who are IDEA eligible formerly served by the LEA or state agency. *34 CFR §300.360(a)*.
4. Any state agency or private school shall comply with the Tennessee Department of Education's *Rules, Regulations, and Minimum Standards for the Governance of Tennessee Public Schools* in the establishment of an educational program. Any facility or LEA that serves a child who is IDEA eligible must also meet the standards established by IDEA and TCA §49-10 (Special Education). DOE will monitor all state agencies providing educational programs, and private schools to ensure compliance with applicable federal and state regulations. Each facility will be monitored on a three (3) year cycle. One year prior to being monitored, all agencies or private schools will be provided technical assistance by DOE. DOE shall then conduct an on-site review of the educational program at the facility or school. Once the review is complete, DOE generally issues a report within thirty (30) calendar days. The report shall include commendations, recommendations, and exceptions that need to be corrected to bring the program in compliance with IDEA and all other applicable state and federal laws and regulations. When exceptions are identified, the facility or school shall be required to provide a corrective action plan (CAP) to DOE within thirty (30) calendar day of the receipt of the report. The corrective action plan shall outline steps and timelines for correcting the exceptions. DOE shall review the plan to assure that it is adequate to ameliorate the exceptions and will follow up with an on-site visit to ensure compliance.
5. DOE is responsible for maintaining a database of information provided by the LEAs on children with disabilities known as a census. DOE shall provide census information to the U.S. Department of Education as required by federal law.

6. DOE shall ensure that all due process hearings requested by parents to resolve issues of IDEA eligibility, placement, or the provision of FAPE will be conducted in accordance with all applicable state and federal statutes and regulations. DOE will maintain a list of state hearing officers and their qualifications. DOE shall appoint hearing officers. All due process hearings under IDEA shall be conducted consistently with state and federal law. *TCA §49-10-601.*
7. In accordance with IDEA, DOE will investigate all administrative complaints filed by parties as it relates to compliance and provision of special education and related services for children who are IDEA eligible. Within sixty (60) calendar days of receipt of a complaint, DOE will conduct an independent investigation; give the complainant an opportunity to submit additional information; and make an independent determination of the issue. DOE will issue a written decision that addresses each of the complainant's allegations and contains findings of fact and conclusions of law as well as the reasons for its final decision. When appropriate, DOE shall conduct on-site investigations to gather additional data and resolve complaints. Upon request and as deemed necessary by DOE, DOE will grant extension to sixty (60) calendar days for the resolution of the complaint in order for the parties to submit additional information. *34 CFR §300.661.*
8. Upon request and with the consent of both the parent and the LEA, DOE will assign a mediator to resolve disputes arising under IDEA. DOE will appoint mediators and provide them with training in mediation and special education law. Consent to mediation by the parent of a child who is IDEA eligible is voluntary and will not delay or deny a parent's right to a due process hearing nor shall it deny parents any other rights afforded them under IDEA Part B. DOE shall bear the cost of the mediation process. Consistent with IDEA, all discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process are required to sign a confidentiality pledge prior to the commencement of the process. *34 CFR §300.506.*
9. DOE shall administer the Systems Change Transition Grant. To receive this grant, the LEA must submit an application to DOE with a proposal for transition services to be provided by the LEA. If accepted, DOE will furnish the LEA with funds to implement the Transition Services proposed in the application. Transition specialists from DOE shall monitor the programs and provide the LEAs with technical assistance as needed. Transition specialists will provide these services to LEAs who are receiving grant funds as well as those that are not. The Systems Change Transition Grant is a one time one year grant to provide seed money for transition services. After the one year grant ends, the Transition Program should be sustainable by the LEA.
10. DOE encourages LEAs to participate in the School to Work Case Manager's Grant Program administered by DHS/DRS. This grant provides the LEA with federal funding to employ a transition case manager to work with DHS/DRS eligible students in the LEA. The LEA is required to provide state or local match dollars. *See Article 4 Section G - DHS/DRS.*
11. DOE has developed a departmental policy which allows for the reimbursement of the LEA for sixty to one hundred percent (60%-100%) of the cost for services provided to high cost/medically fragile children based on the availability of federal funds within any given fiscal year. Criteria established by DOE will be used to determine the priority of disbursement of funds. To apply for these funds, the LEA shall file a request with DOE for reimbursement. The request shall be reviewed by the Assistant Commissioner of the Division of Special Education or his/her designee. The funds shall be distributed to the LEA based on special education expenditures from the General Purpose School Fund and not IDEA Part B, and/or

Preschool Grant funds. The DOE/Division of Special Education shall make the final decision regarding the amount of reimbursement and allotment of funds.

12. DOE, in conjunction with the other Participating Agencies as appropriate, shall provide technical assistance and training to the LEAs as it relates to the billing of other public agencies that are providing services to children who are IDEA eligible and provide any other training and assistance as necessary. For this purpose, DOE will be responsible for coordinating the provision of services with LEAs through the state's Regional Resource Centers to be supported by the Participating Agencies. These Regional Resource Centers will provide technical assistance to LEAs in areas such as evaluation, appeals, best practices, reporting procedures, appropriate provision of special education and related services for individual children, and any other identified areas as needed.
13. DOE shall furnish TennCare/EPSTDT providers with criteria and training concerning IDEA requirements. TennCare will train TennCare/EPSTDT providers concerning EPSTDT requirements. TennCare will ensure that MCOs provide appropriate technical assistance to TennCare providers in billing and the coordination of services for children who are IDEA eligible. This training will be conducted annually and will begin within ninety (90) after this Agreement has become final.
14. Through state statute, Tennessee has extended eligibility for special education and related services to children identified as functionally delayed in accord with *Rules, Regulations, and Minimum Standards for the Governance of Tennessee Public Schools*. Although not entitled to services under IDEA, a child identified as functionally delayed is considered a child with a disability for purposes of this Agreement and shall receive the same services and protections as a child with a disability under IDEA.

b. Local Educational Agency

1. When the local educational agency (LEA) finds or suspects that a child may be eligible for special education and related services under the IDEA, the LEA, with the permission of the parent or legal guardian, shall secure an appropriate evaluation to determine if a child is eligible for special education and related services. If the child is a TennCare enrollee, the LEA, with the permission of the child's parent or legal guardian, may refer the child for an EPSTDT screen. *See Article 4 Section C – TennCare*. When a LEA suspects that a TennCare enrolled child may have a particular medical or behavioral health problem and the child is up-to-date on his EPSTDT screenings, the LEA should refer the child to the child's PCP for an EPSTDT interperiodic screen. However, the LEA must complete the evaluation process within the timelines promulgated by DOE in *Rules, Regulations and Minimum Standards for the Governance of Tennessee Public Schools*. This provision does not alter the timeliness requirements for EPSTDT screens by which the MCOs are bound.
2. Parents of students who are IDEA eligible and students referred for an IDEA eligibility evaluation will be asked to complete a voluntary form to indicate if the child is receiving services from any other Participating Agency. All information provided by the parents of a child who is IDEA eligible is voluntary and will be used only to ensure compliance with IDEA. IDEA services provided by the LEA to children who are IDEA eligible will not be reduced nor will IDEA eligibility be affected if the child is enrolled in the TennCare program. TennCare may not disqualify a medically necessary covered service for reimbursement because that

service is provided in accordance with an IEP. *34 CFR §300.142(b)(1)(i)*. Individual TennCare information such as MCO, BHO, PCP, and related medical information shall be kept strictly confidential as required by FERPA, IDEA, and all applicable state and federal law. Such information will only be used by the LEA to coordinate the appropriate special education, related services, and medically necessary services for each IDEA and TennCare enrolled child. All records and information shall only be disclosed to the extent allowed by IDEA, FERPA, and all other applicable state and federal laws. *See Article 7 - Records*. When a child identified as IDEA eligible is also a TennCare enrollee, the LEA will ask the parent to notify the child's PCP and MCO that the child is receiving special education and has an IEP. The LEA shall also request that the parent agree to share the child's IEP with his/her PCP and MCO. TennCare has developed a release form to help facilitate the disclosure of the IEP to the PCP so that they can help these children receive medically necessary TennCare services, if appropriate. *See Attachment 3 - TennCare Release Form*.

3. In order to ensure that FAPE is provided to eligible children at no cost to parents, parents shall not be required to use private insurance to pay for special education and related services. *34 CFR §300.142(f)*. The use of private insurance must be voluntary and the parents must consent. If a parent elects to access private insurance, the LEA may pay the family's copayment assessed by the insurance company using Part B funds. If a TennCare enrollee is assessed a copayment, the LEA may pay that copayment to ensure that FAPE is provided to children with disabilities at no cost to parents.
4. Services and evaluations for children who are IDEA eligible must be provided within a reasonable time period. *34 CFR §300.142(b)(2)*. In order to provide special education and related services in a timely and efficient manner to students who are IDEA eligible, a LEA may contract with appropriate providers or provide the needed services itself. If the child is a TennCare enrollee, the MCO shall accept the IEP indication of a medical problem or shall have the child appropriately tested. *John B Consent Decree at p. 42*. TennCare will provide all medically necessary covered medical services and all EPSDT screens and interperiodic screens that the child may need. If the child is a TennCare enrollee and non-emergency medical services are provided by the LEA, the LEA must be a TennCare provider in order to seek reimbursement for these services from TennCare consistent with policies and procedures adopted by TennCare, DOE, and this Agreement.
5. Once a child is evaluated, the LEA will convene an IEP Team meeting to determine if the child is eligible to receive special education and related services. If eligibility is determined, the IEP Team will create an appropriate IEP. The special education teacher or person responsible for facilitating the IEP Team meeting will send an invitation to the child's parents and will send a copy of the invitation or personally call representatives from other agencies to participate in the IEP Team meeting if the other agencies may be required to provide services listed in a child's IEP. The LEA will provide all special education or related services to children with disabilities that are part of the IEP and necessary for FAPE in the least restrictive environment. *34 CFR §300.343*
6. All LEAs and Participating Agencies that have chosen to provide special education and related services to IDEA eligible children in contract facilities within the State of Tennessee must ensure the facility meets the requirements set forth in *Rules, Regulations, and Minimum Standards for the Governance of Tennessee Public Schools*. DOE shall monitor these facilities for compliance with IDEA and other state and federal regulations. *See Article 4 Section A - DOE*. An IEP Team meeting must be convened for children who are IDEA eligible educated in a contract facility. The contract facilities agree to provide the services listed in a child's IEP

that would be provided by the LEA in a public school. The LEA is responsible for the educational costs related to the provision of special education and related services for the child attending school in the contract facility if the LEA placed the child in the facility. If a parent enrolls a child who is IDEA eligible in a contract facility, the facility is considered a private school, and the special education and related services costs are the parent's responsibility. The financial responsibility of other Participating Agencies who are providing services in the child's IEP shall not be altered because the child who is IDEA eligible is being educated at a contract facility when placed there by the IEP Team.

7. When a child who is IDEA eligible reaches the age of fourteen (14), the IEP Team shall formulate an ITP (Individualized Transition Plan) that will include the transition service needs of the child. The LEA shall provide functional and vocational assessments as needed that will assist the IEP Team in formulating an appropriate ITP. The ITP will focus on the child's course of study while in school. The special education teacher or person responsible for facilitating the IEP Team meeting will send a copy of the invitation sent to the parents and child or personally call a representative from DMRS, DHS/DRS, DCS, and other agencies, as appropriate, and invite them to the IEP Team meeting. The ITP will be updated annually. *34 CFR §300.347(b)(1)*. The child must be invited to the meeting. If the student is not in attendance, documentation must be presented and considered concerning his preferences and interests.
8. When a child who is IDEA eligible reaches the age of sixteen (16), or younger if determined appropriate by the IEP Team, the ITP will include a statement of needed transition services as well as the agency responsible for providing and paying for the services. *34 CFR §300.347(b)(2)*. If the IEP Team determines that the student should be referred to DHS/DRS for vocational rehabilitation services, the student must be present at the IEP team meeting when the referral is made.
9. As part of the IEP Team process, the LEA shall facilitate the transition from special education and related services to vocational rehabilitation services. Therefore, the LEA will provide DHS/DRS with the child's last psychological report and information about the student's ability to obtain and maintain employment, functional inventories and performance reports on community/work-based learning experiences. All of the information and data supplied by the IEP Team which documents successful community job training experiences will supplement any evaluations DHS/DRS might choose to perform. All evaluations provided by the LEA to DHS/DRS for vocational rehabilitation eligibility determinations shall be considered confidential education records consistent with IDEA, FERPA, and all applicable federal and state laws. *See Article 7 - Records*.
10. If another public agency is obligated under federal or state law or assigned responsibility under State policy to provide or pay for any services that are also considered special education or related services and are necessary for ensuring FAPE to children who are IDEA eligible, the public agency shall fulfill that obligation or responsibility, directly, through contract or by another arrangement. *34 CFR §300.142(b)*. If another public agency is responsible for services that are part of special education or related services listed in a child's IEP, the LEA will notify the other public agency by letter or by personal phone call of its financial responsibility for covering that service pursuant to applicable state and federal law or regulations and this Agreement. The LEA shall also send the public agency a copy of the IEP that pertains to the services in question. The LEA shall notify all public agencies that may have financial responsibility for special education and related services of the child's IEP Team meeting by sending a copy of the invitation sent to the parents or personal phone call. *34 CFR*

§300.344. The public agency that has financial responsibility for providing a child who is IDEA eligible with services shall not be relieved of that responsibility simply because an agency representative does not attend an IEP Team meeting. Additionally, the failure of that public agency to pay for that service shall not relieve the LEA of its obligation to provide that service to the child with a disability in a timely manner. 34 CFR §300.142(b)(2). The LEA may seek reimbursement for the services for which the child is eligible under each agency's programs from the public agency that failed to provide or pay for these services. *Id.* In order for a LEA to seek reimbursement from TennCare or a MCO or BHO, the LEA must be a TennCare provider. If there is a dispute regarding reimbursement, the dispute shall be resolved in accord with the procedures outlined in Article 6 of this Agreement.

11. The LEA shall provide information to the parent of a child who is IDEA eligible on accessing services from other public agencies that may assist the parent in meeting the child's needs but which are not services under IDEA. If the school suspects that not all areas of the child's suspected disability have been addressed, it is the school's responsibility to address all the areas and contact other Participating Agencies, as necessary, unless the IEP states otherwise. The referral by the LEA representative on the IEP Team of a child to other public agencies shall not be considered a determination of eligibility or obligate the public agency to provide or pay for any service not in the child's IEP. The parent shall be responsible for meeting all eligibility requirements of other public agencies.
12. Beginning one year before a student reaches the age of majority (eighteen (18) in Tennessee), the student's IEP must include a statement that the student has been informed of his/her rights under IDEA that will transfer to the student upon reaching the age of majority. All rights will be transferred from the parent to the student upon reaching the age of majority unless the student has been declared incompetent under Tennessee law. 34 CFR §300.517. However, nothing in this section prohibits the LEA from inviting a child's parent to an IEP Team meeting if the parent has special knowledge related to the student which may be helpful in determining appropriate special education and related services for the student who has reached the age of majority. 34 CFR §300.344(a)(6).

B. Bureau of TennCare

1. TennCare contracts with MCOs to provide medical care through networks of subcontracted health providers. MCOs are paired with BHOs to create access to a network of providers for enrollees in need of mental health and substance abuse services. TennCare monitors MCOs and BHOs to ensure that they are in compliance with TennCare Rules and are providing accessible in-network providers to TennCare enrollees.
2. TennCare shall perform TennCare eligibility determinations for children who apply for TennCare and conduct EPSDT outreach to help TennCare enrollees receive medically necessary care consistent with *John B. Consent Decree* at pp. 15-18.
3. TennCare is responsible for providing EPSDT services for all children who are TennCare enrollees. EPSDT services include: (a) periodic well-child screenings in accordance with the recommendations of the American Academy of Pediatrics; (b) medically necessary health and behavioral health diagnostic services; and (c) medically necessary health and behavioral health treatment services. EPSDT treatment services include "such other necessary health care, diagnostic services, treatment and other measures [described in §1396d(a)] . . . to correct or to ameliorate defects and physical and mental illnesses and conditions discovered by the screening

services, whether or not such services are covered under the State Plan.” 42 USC §1396d(r)(5); *John B. Consent Decree* at p. 5. EPSDT services are based on the individual child’s medical, developmental, and behavioral health needs. No prior authorization by the MCO is needed for a screen conducted by a PCP, and the MCO will provide all medically necessary covered services regardless of whether or not the need for such services was identified by a provider who received prior authorization or by an in-network provider. *John B. Consent Decree* at p. 21. TennCare (including its contractors, the MCOs and BHOs) cannot impose limitations on EPSDT services other than medical necessity. This means that the state cannot set arbitrary limits of duration, scope, or cost of services under EPSDT. *John B. Consent Decree* at p. 33. The MCOs and BHOs have the discretion to require that their network providers deliver TennCare covered services, as long as the networks are sufficient in size and scope to meet the access standards of the MCO/BHO’s contract with the state.

4. Any encounter with a health professional practicing within the scope of his/her practice is an interperiodic screen. Any person such as an educator, parent, or health professional who suspects a health problem may refer a child for an interperiodic screen. An interperiodic screen does not have to include any screening elements required for a periodic screen. No prior MCO authorization is required for an interperiodic screen, and the MCO shall provide all medically necessary covered services identified by the interperiodic screen. *John B. Consent Decree* at p. 23.
5. LEAs, with parental consent, should refer TennCare enrolled children for EPSDT screenings when the child is not up to date on his/her screens. Neither the parent nor TennCare is required to inform the LEA that the child is a TennCare enrollee. The child’s MCO will be responsible for identifying whether or not the child’s screenings are up-to-date and shall be responsible for providing screenings as needed. The MCO may share this information with the LEA only with parental consent. These screens shall be provided by the child’s PCP under contract with the MCO. When a LEA suspects that a TennCare enrolled child may have a particular medical or behavioral health problem and the child is up-to-date on his EPSDT screenings, the LEA should refer the child to the child’s PCP for an EPSDT interperiodic screen. The PCP will make recommendations to the MCO/BHO if he/she believes there is a need for additional diagnosis and/or treatment that is medically necessary. *John B. Consent Decree* at p. 38.
6. TennCare will provide all covered medically necessary services, including durable medical equipment, for all children who are TennCare enrollees, regardless of whether or not these children are IDEA eligible. TennCare shall provide transportation to and from appointments for services covered by TennCare when the enrollee does not have access to transportation services. *John B. Consent Decree* at pp. 41-2. TennCare may not disqualify an eligible service for TennCare reimbursement because that service is provided in accord with an IEP. 34 CFR §300.142(b)(1)(i). MCOs and BHOs have the discretion to require that covered services be delivered by providers in their networks, within the access standards required in their contracts with the state. There is no specific requirement that MCOs and BHOs provide services in the schools if these services can be delivered by the MCOs’ or BHOs’ qualified providers within the required access standards.
7. Children who are inmates are not covered by TennCare. 42 CFR §435.1008, 435.1009. An inmate is defined as an individual confined for a criminal offense in a local, state, or federal prison, jail, youth development center, or other penal or correctional facility, including a furlough from such facility. Excluded from this definition are persons confined in a juvenile detention center. *Tenn.Rule 1200-13-12-.01(25)*.

8. Emergency medical services are available twenty-four (24) hours per day, seven (7) days per week for TennCare enrollees. Coverage of emergency medical services is not subject to prior authorization by the MCO. *Tenn.Rule 1200-13-12-.04(4)*
9. Each TennCare MCO and BHO is responsible for the management of medical care and continuity of care for all its TennCare enrollees including children who are IDEA eligible. Specific responsibilities include performance of reasonable preventive health case management services, appropriate referral and scheduling assistance for enrollees needing specialty health care services, monitoring of enrollees with ongoing medical conditions, coordinated hospital and/or institutional discharge planning that includes post-discharge care as appropriate, maintenance of an internal tracking system which identifies the current preventive service screening status and pending due dates for each enrollee, and authorization of out-of -plan or out-of-state services which are medically necessary due to an emergency. *Contractor's Risk Agreement between TennCare and MCO September, 1995*. In addition, to coordinate EPSDT screens and services, each TennCare MCO/BHO shall provide case management services by assisting children for whom case management is medically necessary. *John B. Consent Decree at p. 38*. The case management provided shall center on the process of collecting information on the health needs of the child, making and following up on referrals as necessary, and activating the examination/diagnosis/treatment loop. *Id. at pp. 38-9*. The case management services must meet the needs of the child and cannot be used exclusively as a tool for prior authorization. *Id. at p. 39*.
10. TennCare shall coordinate the delivery of covered health and behavioral health services with services offered by other state health agencies and shall attempt to make use of other public health, mental health, and educational programs and related programs such as Head Start to ensure an effective child health program. TennCare shall inform the LEAs that MCOs are responsible for requesting the IEPs of enrollees who they know are children who are IDEA eligible and enrolled in each MCO. TennCare has developed a release form to provide to LEAs that a parent may use to consent to the release of education records consistent with IDEA, FERPA and all applicable state and federal regulations. The LEA is responsible for sharing the IEP with the PCP after obtaining appropriate parental consent. *See Attachment 3 - TennCare Release Form*. MCOs shall accept the IEP indication of a medical problem or shall have the child appropriately tested. Coordination by the MCO and LEA should be calculated to reduce gaps and overlaps in services. *John B. Consent Decree p. 42*.
11. The Solutions Unit, as designated by TennCare, will review all TennCare appeals by TennCare enrollees regarding the denial, delay, termination, suspension, or reduction of medical assistance by the MCO or BHO. Appeals will be handled in accordance with procedures outlined in applicable State rules and as required by the *Grier* revised Consent Decree. *TennRule 1200-13-12-.11*.

C. Tennessee Department of Children's Services

1. No child with a disability shall be denied special education and related services in the least restrictive environment because of his/her status as a child in state custody. For the purposes of DCS and this section of the Agreement, least restrictive environment means the placement that is no more restrictive than is necessary to meet the treatment and security needs of the student. *DCS Glossary p. 18.* As governed by IDEA, all educational placements, and special education, and related services decisions remain with the child's IEP Team when the child is placed in state custody.
2. Placement in DCS custody is court ordered due to dependency and neglect, unruliness or delinquency, and is not an educational placement. DCS develops a permanency plan for each child which includes education, behavior, personality, family and testing results. If the child is IDEA eligible or needs to be referred for testing, this will be indicated on the permanency plan.
3. The provision and cost of special education and related services for a child with a disability in DCS custody and living in a foster home shall be provided for in the following manner:
 - a. The local LEA, where the child is residing, shall be the LEA for a child living in a foster home. The local LEA shall have primary responsibility for fulfilling the requirements of IDEA. *See Article 4, Section A.b. - LEA.*
 - b. DCS shall refer the child to the LEA, where the child is residing, which will evaluate the child for IDEA eligibility. The local LEA shall convene an IEP Team meeting to determine IDEA eligibility and develop and implement an IEP if appropriate. *See Article 4, Section A.b. - LEA.*
 - c. A DCS representative shall be present at the IEP Team meeting of a child who is IDEA eligible in DCS custody. However, the DCS representative may not sign the IEP, as a parent. The parent must sign the IEP. If a parent cannot be located, the LEA will appoint a surrogate parent. The surrogate parent, when representing the child's educational interests, shall have the same rights as parents of children who are IDEA eligible.
 - d. DCS shall be financially responsible for the room and board of children in foster care.
4. The provision and cost of special education and related services for a child who is IDEA eligible in DCS custody and attending an approved DOE school at a DCS contract facility shall be provided for as follows:
 - a. The DCS contract facility shall convene an IEP Team meeting in order to determine eligibility and develop and implement an appropriate IEP. The DCS contract facility provides special education and related services and ensures that a child who is IDEA eligible receives the services in his/her IEP in a reasonable time. The participation of other agencies in a child's IEP Team meeting and the financial responsibility to provide services shall not be altered because a child is attending school in a contract facility. The contract facility may receive reimbursement for services provided from other public agencies, as appropriate. *See Article 4, Section A.b.10 - LEA.*

- b. Educational programs provided to children in DCS contract facilities shall be monitored by DOE. The Department of Finance and Administration shall monitor compliance with the contract provisions, and DCS shall provide the facility with technical assistance as necessary. Before entering into a contract with any facility that will provide educational programs to children in DCS custody, DCS will assure DOE that the facility will meet the standards enumerated in *Rules, Regulations and Minimum Standards for the Governance of Tennessee Public Schools* for non-public schools. DCS shall not contract with a facility for the provision of special education and related services for a child who is IDEA eligible in state custody who has DOE category five school approval.
 - c. The financial responsibility of other Participating Agencies to provide services in the child's IEP shall not be altered because the child who is IDEA eligible is being educated in a contract facility.
5. The provision and cost of special education and related services for a child with a disability in DCS custody, living in a contract facility that does not maintain an on-site school shall be provided for in the following manner:
- a. The local LEA where the child is residing shall have primary responsibility for fulfilling the requirements of IDEA. *See Article 4, Section A.b. - LEA.*
 - b. DCS shall refer the child to the local LEA which will evaluate the child for IDEA eligibility. The local LEA shall convene an IEP Team meeting to determine eligibility and develop and implement an IEP if appropriate.
 - c. A DCS representative (which may include a DCS contract agency representative) shall be present at the IEP Team meeting of all children who are IDEA eligible in DCS custody. However, the DCS representative may not sign the IEP, as a parent. The parent must sign the IEP. If a parent cannot be located, the LEA will appoint a surrogate parent. The surrogate parent, when representing the child's educational interests, shall have the same rights as parents of IDEA eligible children.
6. The provision and cost of special education and related services for a child with a disability in DCS custody and living in a runaway house/shelter shall be provided for in the following manner:
- a. Runaway houses/shelters have entered into a contract with DCS and are considered contract facilities with the same educational responsibilities as any other DCS contract facility. *See Article 4 Section C4.*
 - b. The runaway house/shelter shall convene an IEP Team meeting to determine eligibility and to develop and implement an IEP, if appropriate. The runaway house/shelter shall assume the costs of providing special education and related services as indicated in the IEP.
 - c. The financial responsibility of other Participating Agencies to provide services in the child's IEP shall not be altered because the child who is IDEA eligible is being educated in a runaway house/shelter.
7. The provision and cost of special education and related services for a child with a disability in DCS custody, living in a DCS residential facility and attending an in-house school shall be provided for in the following manner:

- a. DCS may serve as the LEA for children who are in the custody of DCS and reside in DCS residential facilities. *TCA §37-5-119*. DCS, if it is the LEA, shall assume the cost of special education and related services for an IDEA eligible child who resides in a DCS residential facility.
 - b. In accordance with IDEA, DCS, as the LEA, shall convene an IEP Team meeting to determine eligibility and develop and implement an IEP in accordance with the child's Permanency Plan, if appropriate.
 - c. DCS, if it is the LEA, will pay for an evaluation to determine if a child in its custody and living in a residential facility may be IDEA eligible.
 - d. The financial responsibility of other Participating Agencies to provides services in the child's IEP will not be altered because the IDEA eligible child is being educated in a residential facility.
 - e. DCS shall pay the residential costs for children in DCS custody who need residential treatment.
8. The provision and cost of special education and related services for a child who is IDEA eligible in DCS custody, residing in a Youth Development Center (YDC) shall be paid for in the following manner:
- a. DCS shall serve as the LEA for children who are in the custody of DCS and reside in YDC. *TCA §37-5-119*. DCS shall assume the cost of special education and related services for a child who is IDEA eligible who resides in a YDC.
 - b. In accordance with IDEA, DCS, as the LEA, shall convene an IEP Team meeting to determine eligibility and develop and implement an IEP in accordance with the child's Permanency Plan, if appropriate.
 - c. DCS will pay for an evaluation to determine if a child in its custody and living in a YDC may be IDEA eligible.
 - d. The financial responsibility of other Participating Agencies to provides services in the child's IEP will not be altered because the child who is IDEA eligible is being educated in a YDC except that the child is not eligible for TennCare. *But see Article 4 Section C14*.
 - e. DCS shall pay the residential costs for children in DCS custody who need residential treatment.
9. The provision and cost of special education and related services for a child with a disability in DCS custody and living in a detention center shall be provided for in the following manner:
- a. The local LEA where the detention center is located shall serve as the LEA for a child who is IDEA eligible living there.
 - b. The local LEA shall convene an IEP Team meeting to determine eligibility and develop an IEP for a child who is IDEA eligible, if appropriate. The local LEA shall provide the detention center with teachers who shall provide the educational program to the child with a

disability in the detention center in accordance with the child's IEP. The LEA shall assume the financial responsibility for the provision of special education and related services.

- c. The financial responsibility of other Participating Agencies to provide services in the child's IEP shall not be altered because the IDEA eligible child is being educated in a detention center.
- 10. The obligation to make FAPE available to all children with disabilities does not apply to students age eighteen (18) to twenty-one (21) if , prior to incarceration in an adult correctional facility, the students were not actually identified as being IDEA eligible and did not have an IEP. If a child with a disability is convicted as an adult under state law and incarcerated in an adult prison, the following requirements of IDEA do not apply: 1) the requirements contained in 34 CFR §300.138 and §300.347(a)(5)(i) (relating to participation of children with disabilities in general assessments; and 2) the requirements of §300.347(b) (relating to transition planning and transition services) with respect to students whose eligibility under Part B will end because of their age before they will be eligible to be released from prison considering their sentence and possibility for early release. The IEP Team of a student with a disability who is convicted as an adult and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The IDEA requirements relating to the least restrictive environment do not apply to the modification of placement for penological reasons. *34 CFR §300.311.*
- 11. In order to expedite the provision of special education and related services to any child who is IDEA eligible in DCS custody, a LEA formerly serving the child shall provide DCS with the child's education records within fourteen (14) calendar days of receipt of the request unless there is a critical need to expedite forwarding of the records. The former LEA providing the child's special education and related services should forward to DCS the child's IEP and all evaluations which were used to assess the child's IDEA eligibility. However, failure to receive education records does not suspend the responsibility of DCS to provide a child with a disability FAPE in the least restrictive environment. Nothing in this provision is meant to supersede the requirements of FERPA, state and federal law and the regulations promulgated thereunder.
- 12. When it appears that a child who is IDEA eligible in DCS custody can be provided FAPE in a less restrictive environment, DCS shall facilitate the child's transition to the LEA in the following manner:
 - a. DCS shall notify the LEA of the need to convene an IEP Team meeting. DCS and the LEA will work together to determine an appropriate placement. A representative from DCS shall attend an IEP Team meeting to assist in determining the most appropriate educational placement. However, the DCS representative shall not sign the IEP as parent.
 - b. If the IEP Team determines that the child should be provided FAPE in the LEA, as the least restrictive environment, the child shall be enrolled in the local LEA where the child is residing. The LEA shall be responsible for providing and paying for special education and related services for the IDEA eligible child not DCS. Absence of a representative from DCS or the local LEA at the IEP Team meeting does not relieve that agency from any responsibilities imposed by this section.
- 13. When a child who is IDEA eligible is discharged from DCS custody, DCS will notify DOE/Division of Special Education of release information and identify the LEA where the student will be attending school. When a child in DCS custody transitions into the local LEA,

DCS will provide the local LEA with the education records of the child consistent with IDEA and FERPA. The schools in the facility or contract agency shall provide the LEA with the education records of children who are IDEA eligible transitioning to the LEA within fourteen (14) calendar days of receipt of the request from the LEA unless there is a critical need to expedite forwarding of the records. However, failure to receive education records does not suspend the responsibility of the LEA to provide FAPE. Nothing in this provision is meant to supersede the requirements of the FERPA, state and federal law and the regulations promulgated thereunder.

14. Medical services for children in DCS custody shall be paid for as follows:
 - a. TennCare is responsible for the provision of all covered medically necessary services to children in DCS custody who are TennCare enrollees except children who are inmates as defined in Tenn.Rule 1200-13-12-.01(25). Medical and behavioral services are provided by the assigned MCO or BHO. However, DCS provides case management services and residential treatment services to children in DCS custody.
 - b. DCS, when acting as a LEA for a child in DCS custody, will pay for medical services specified in the child's IEP that for the purposes of TennCare are not covered medically necessary services.
 - c. Children who are inmates, as defined in Tenn. Rule 1200-13-12-.01(25), are not eligible for TennCare. Therefore, DCS shall contract with appropriate providers, in addition to an on-site nursing staff, to ensure that the necessary medical and mental health services are provided to children who are inmates.
15. As mandated by IDEA, federal and state law and regulations, DOE will monitor all special education programs and services in all DCS facilities and contract agencies using appropriate monitoring procedures. DOE will assist DCS in providing technical assistance and in-service training to DCS staff, caseworkers, and contract facility administration and teachers in identified areas of need relating to children with disabilities. DCS shall work with contract facility staff and faculty in identifying training needs. DOE, through its monitoring efforts, shall also assess areas needing improvement and coordinate technical assistance through DCS. As a LEA, DCS shall be responsible for submitting a corrective action plan (CAP) to respond to any areas of deficiencies identified by DOE through its monitoring and/or compliance efforts. *See Article 4 Section A.*
16. The Solutions Unit, as designated by TennCare, will review all TennCare appeals by TennCare enrollees regarding the denial, termination, delay, suspension, or reduction of TennCare services for a child in DCS custody. *TennRule 1200-13-12-.11, see also Grier revised Consent Decree.* Children in DCS custody receiving enhanced behavioral health services provided by DCS may appeal to the Solutions Unit. In addition to the medical and enhanced behavioral health procedures, DCS has developed policies and procedures to resolve complaints and grievances in a timely manner.

D. Tennessee Department of Mental Health and Developmental Disabilities

1. No eligible child shall be denied special education and related services in the least restrictive environment due to his/her status as a child residing in a Regional Mental Health Institute

(RMHI). Placement in a RMHI may not be solely an educational placement but must meet the requirements of one of the applicable state statutes governing psychiatric hospitalization. A child must be admitted by a physician pursuant to state statutes (TCA §§33-6-101, 33-6-103-104, 33-3-401, 33-3-412, and 37-1-128). Except in circumstances of an emergency, as defined in TCA §33-6-103 and §33-3-412, admission to a RMHI is subject to the availability of suitable accommodations. TDMHDD will provide care for all children who are residing in a RMHI, as provided in state and federal law. All educational placements must remain with the child's IEP Team.

2. TDMHDD will assume the costs of special education and related services for all children who are IDEA eligible in a RMHI through state appropriations if the child meets the statutory requirements for hospitalization pursuant to state statutes (TCA §§33-6-101, 33-6-103-104, 33-3-401, 33-3-412, and 37-1-128). Special education and related services shall be provided through TDMHDD schools at the RMHI. TDMHDD schools operate under 34 CFR §300.2 as "other State agencies and schools" and as such, must meet the *Rules, Regulations, and Minimum Standards for the Governance of Tennessee Public Schools* established by DOE. See *Article 4 Section A.*
3. As mandated by federal and state law and regulation, DOE will monitor all IDEA programs and services provided by RMHI using an appropriate monitoring instrument. See *Article 4 Section A.* DOE, in conjunction with TDMHDD, shall provide technical assistance regarding IDEA requirements and special education and related services to RMHI staff and teachers, as appropriate. DOE through its monitoring, in conjunction with TDMHDD and the RMHI staff, shall identify training and technical assistance needs at the RMHIs.
4. When a child who is IDEA eligible resides in a RMHI and is receiving inpatient services, the RMHI school will continue to follow the child's IEP from the previous educational placement until the child is discharged. However, the child's IEP shall be reviewed and modified as appropriate and consistently with IDEA. If the child who is IDEA eligible is residing in the RMHI and does not have an IEP, the RMHI school shall convene an IEP Team meeting in order to determine IDEA eligibility and develop an IEP if appropriate.
5. In order to expedite the provision of special education and related services to any child who is IDEA eligible living in a RMHI, the LEA formerly serving the child shall provide the RMHI with the child's education records within fourteen (14) calendar days of receipt of the request unless there is a critical need to expedite forwarding the records. With the consent of the child's parent, TDMHDD will notify the local LEA that an IDEA eligible child is being released from a RMHI and will be returning to the local LEA. The RMHI shall provide, within fourteen (14) calendar days of receipt of request, the education records of children educated at the RMHI who return to the LEA, to a DCS residential facility school, or a contract facility school where the child will be attending school unless there is a critical need to expedite forwarding the records. However, failure to receive such records does not suspend the responsibility of TDMHDD, DCS, or the LEA to provide or cause to be provided special education and related services to a child who is IDEA eligible. The transfer of records will be consistent with IDEA, FERPA, and all other applicable state and federal regulations.
6. When it appears that a child who is IDEA eligible and is receiving care in a RMHI can be provided an appropriate educational program in a less restrictive environment, a representative from the LEA serving the geographical area where the RMHI is located shall be invited by the RMHI to attend an IEP Team meeting to determine the most appropriate educational placement. If the IEP Team determines that the child can be provided FAPE in a less

restrictive environment, the child will be enrolled in the LEA where the RMHI is located. The LEA serving the geographic area where the RMHI is located shall be responsible for providing special education and related services under IDEA. Upon enrollment, the financial responsibility for the child's IDEA services shall transfer from TDMHDD to the LEA where the child attends school. All other costs shall be paid in accordance with TCA §33-4 (Mentally Ill and Mentally Retarded Persons - Cost of Services).

7. TDMHDD shall have no responsibility for the costs of special education and related services under IDEA for a child prior to admission to a RMHI, or when a child who is IDEA eligible has been discharged from a RMHI.
8. Nothing in this Agreement is meant to alter or abrogate any contractual agreement between TDMHDD and other parties or agencies regarding the provision of inpatient hospitalization.
9. The Solutions Unit, as designated by TennCare, will review all TennCare appeals by TennCare enrollees regarding the denial, delay, termination, suspension or reduction of mental health services for a child who is receiving mental health services in a RMHI. *TennRule 1200-13-12-.11, Grier revised Consent Decree.*

E. Tennessee Division of Mental Retardation Services

1. The Division of Mental Retardation Services (DMRS) provides services for children with mental retardation through the Home and Community Based Services (HCBS) waiver and state funded services. It does not provide special education or related services as described in IDEA Part B. Access into the waiver is not guaranteed and is subject to funds available through state appropriations. Services funded by state appropriations are provided to those who are eligible in proportion to the availability of funds. DMRS programs are not an entitlement.
2. If a child who is IDEA eligible is residing in one of the DMRS Developmental Centers, the local LEA will ensure that the child receives FAPE in the least restrictive environment. The local LEA will convene an IEP Team meeting to determine eligibility, and develop and implement an appropriate IEP in accordance with IDEA and all applicable state and federal regulations. The local LEA is responsible for the cost and provision of special education and related services. Medicaid pays residential costs for children residing in developmental centers through ICF/MR (Intermediate Care Facility for the Mentally Retarded) funds.
3. For children served in the HCBS waiver, the LEA where the child is residing will provide special education and related services if the child is IDEA eligible. While there are no age requirements associated with the HCBS waiver, a person shall be twenty-two (22) years of age or have a high school diploma and no longer eligible to receive services under IDEA to qualify for day habilitation or supported employment services.
4. Everyone in the HCBS waiver shall have an Independent Support Coordinator (ISC). The ISC or case manager shall attend the IEP Team meeting of a child who is IDEA eligible. At the IEP Team meeting, the ISC will work with the other team members to assure that the Individual Support Plan (ISP) and the IEP complement each other so that the child is provided with a comprehensive and effective set of services and supports. DMRS, in collaboration with DOE, will provide technical assistance to parents, case managers, and ISCs regarding the IEP development process.

5. As part of the IEP Team process, the LEA should notify DMRS when it believes a child is eligible and may benefit from DMRS services and supports. Consistent with IDEA, the LEA shall be responsible for inviting a DMRS representative to a child's IEP Team meeting when the child reaches age 14, to facilitate planning for the child's transition from school services to adult services. These DMRS or HCBS waiver funded services for which a child who is IDEA eligible qualifies should be stated in the child's ITP at age 16. The IEP/ITP will be updated annually. *See Article 4 Section A.b. - LEA.*
6. The Solutions Unit, as designated by TennCare, will review all TennCare appeals by TennCare enrollees regarding the denial, delay, termination, suspension or reduction of waiver services. *TennRule 1200-13-12-.11, Grier revised Consent Decree.*

F. Tennessee Department of Human Services

Division of Rehabilitation Services

1. The Department of Human Services, Division of Rehabilitation Services (DHS/DRS) will provide vocational rehabilitation services for individuals with disabilities who meet DHS/DRS's eligibility criteria. DHS/DRS is not an entitlement program. Services funded by state appropriations, matched with federal funds are provided to those who are eligible in proportion to the availability of funds.
2. An individual with a disability may be self-referred to DHS/DRS, or may be referred by another individual or another agency. A referral may be made by contacting a rehabilitation services office in person, by mail, or by telephone.
3. An individual is eligible for assistance if he is an individual with a disability and requires vocational rehabilitation services to prepare for, secure, retain, or regain employment. *34 CFR §361.42(a)*. For DHS/DRS purposes, an individual with a disability means any individual who: 1) has a physical or mental impairment that constitutes or results in a substantial impediment to employment for that individual; and 2) can benefit in terms of an employment outcome from vocational rehabilitation services. *Id.* The determination of eligibility for vocational rehabilitation services shall be based on existing and current information from other programs and providers, the individual and his family. To the extent that such data is unavailable or insufficient for determining eligibility, DHS/DRS shall secure the necessary evaluations to make a determination.
4. Eligibility determinations will be made by DHS/DRS counselor. Determinations made by officials of other agencies, particularly education officials, regarding whether an individual has a qualifying disability, shall be used, to the extent appropriate and consistent with the requirements of the Rehabilitation Act of 1973 as amended (29 USC §720 *et seq.*), in assisting DHS/DRS in making such determinations. *34 CFR §361.42(c)(1)(2)*.
5. To the extent possible, DHS/DRS will make available a vocational rehabilitation counselor to participate in the IEP Team meeting when requested by the LEA. The rehabilitation counselor will assist in the formulation of an IEP/ITP and secure a copy of the IEP/ITP for the student's DHS/DRS case record if the student is eligible for vocational rehabilitation services. The vocational rehabilitation counselor will establish and maintain a working relationship with

special education supervisors, vocational education supervisors, directors, secondary school guidance counselors and staff of DMRS and TDMHDD.

6. Twelve to eighteen months prior to the student's exit from school, the LEA will provide DHS/DRS the most current copies of medical, psychological, vocational, and social evaluations and all other available information needed for establishing eligibility and identifying vocational rehabilitation needs of each student referred for services. If the information is not appropriate, DHS/DRS may need to secure current information to provide a basis for an eligibility determination.
7. When DHS/DRS determines a student with a disability will be eligible for vocational rehabilitation services, the student, and the student's parent/guardian if appropriate, will develop an Individualized Plan for Employment (IPE), with the assistance of a Vocational Rehabilitation Counselor or other technical assistance as required. The IPE will include the specific employment outcome chosen by the student, consistent with the student's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, in an integrated setting to the maximum extent appropriate. It will include a description of vocational rehabilitation services to be provided by DHS/DRS, timelines for initiation of services and achievement of the employment outcome. Also included are the vendors and method of procuring services, criteria to evaluate progress, and the terms and conditions of the IPE. If applicable, information about any projected need for rehabilitation technology, personal care assistance, supported employment, or post-employment services will be included.
8. DHS/DRS begins to help coordinate transition services to high school students with disabilities, who meet DHS/DRS eligibility criteria, 12-18 months prior to their exit from school to assist them in gaining employment. Transition services are provided jointly by DHS/DRS through Vocational Rehabilitation Counselors. A Vocational Rehabilitation Counselor will assist in coordinating services including vocational evaluation, training, placement, and other services either directly, or through referral to appropriate agencies. The types of services provided are based on the needs of the individual. DHS/DRS will coordinate and/or provide vocational rehabilitation post-secondary training and job placement, and participate in public and professional awareness activities regarding availability of services.
9. DHS/DRS will provide vocational rehabilitation services to an eligible individual. These services include any services listed in an IPE necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. DHS/DRS will coordinate assessment activities and program planning. Any services provided by DHS/DRS are available only to the extent that they relate to an employment outcome.
10. DHS/DRS is not an entitlement program and provides services to eligible individuals to the extent funding will allow. Some services are based on an economic need standard that takes into account the number of family members living in the home and available family financial resources. Services which may be provided regardless of financial need include: diagnostic exams, counseling and guidance, maintenance and/or transportation necessary to determine eligibility; job placement, including required union and organizational dues; tuition for post-secondary schools and training; personal/work adjustment; supported employment; tutorial training; orientation and mobility training services; reader, interpreter, translator, attendant or job coaching services; licenses or permits for an occupation or business; and services provided

by the Tennessee Rehabilitation Center. Other services available are provided in proportion to the financial resources of the student/family.

11. DHS/DRS is required by State laws and regulations TCA § 71-1-104 and 71-1-105; TCA § 49-11-601 and by Federal law and regulations (29 U.S.C. §721(a)(5)(A) as amended and 34 C.F.R. §361.36) to maintain an order of selection when providing services to persons meeting the basic guidelines for eligibility. Vocational Rehabilitation's order of selection is designed to ensure that persons with the most significant disabilities receive a higher priority for services. Based on prior experience, as well as budgetary expectations, DRS anticipates continuing to be able to serve all eligible individuals who apply for services. The order of selection represents contingency planning which will allow the division to quickly implement services to only priority groups should necessity arise due to funding limitations.
12. When an applicant for vocational rehabilitation services or an individual being provided vocational rehabilitation services is dissatisfied with any action concerning the furnishing or denial of these services, the individual or his representative may file a request for an informal administrative review, mediation, or fair hearing at the nearest vocational rehabilitation office within ten (10) working days of their disagreement or unfavorable treatment by DHS/DRS. *T.C.A. §49-11-612*. A Client Assistance Program is available to provide assistance in informing and advising all applicants for services of available benefits under the Rehabilitation Act. Upon request the Client Assistance Program may assist each individual in his/her pursuit of services provided under the Rehabilitation Act, including assistance in pursuing legal, administrative, or other appropriate remedies to ensure the protection of rights under this Act.

Article Five

IDEA Part C Services

Early Intervention System

The mandate of IDEA Part C is to develop a comprehensive, interagency, multidisciplinary, family-centered and community based services system that is accessible to all infants and toddlers birth to age three with disabilities and their families. The purpose of this Interagency Agreement is to specify the financial responsibility of each Participating Agency and establish procedures for achieving timely resolution of intra-agency and interagency disputes. *34 CFR §303.523*.

A. Collaboration

1. Each Participating Agency shall support the ongoing development and implementation of Tennessee's statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for all infants and toddlers with disabilities and their families. Each Participating Agency shall support and assist the coordination of payments for these early intervention services from all public and private sources to enhance the State's capacity to provide quality early intervention services and to expand and improve existing services. *34 CFR §303.01*.
2. The Commissioner of each Participating Agency that is involved in the provision of or payment for early intervention services shall appoint a representative with sufficient authority to engage

in policy planning and implementation on behalf of their Agency to serve on the ICC. *34 CFR §303.600 et seq.*

3. Each Participating Agency agrees to support the ongoing development of policies and procedures which will ensure that all infants and toddlers with disabilities and their families have timely and efficient access to appropriate service coordination, evaluations, referrals, services, transition planning, and implementation. Each Participating Agency shall promote and support the implementation of such policies and procedures within their agency and contract providers to ensure compliance with federal statutes and regulations regarding infants and toddlers with disabilities.
4. Each Participating Agency shall conduct individual or coordinated efforts to provide information to the public regarding Tennessee's system of early intervention services to include information on accessing the service system. *34 CFR §303.320.* Each agency, on the state and local level, shall submit and annually update information to be included in Tennessee's Central Directory of services and will, as appropriate, assist in the distribution of this Directory. *34 CFR §303.301.*
5. Each Participating Agency shall provide training and technical assistance to its service providers and, to the greatest degree appropriate, the staff of other Participating Agencies, regarding their roles and responsibilities in the provision of early intervention services in accordance with IDEA Part C.
6. Each Participating Agency shall appoint a representative, with the capacity to speak on behalf of the Participating Agency, to participate in Local Interagency Coordination Councils to facilitate collaboration in the planning, coordination, and provision of early intervention services at the local level. Each Participating Agency shall also encourage its local providers to participate in Local Interagency Coordination Councils.
7. Each Participating Agency shall ensure that its service coordinators, as appropriate, on the local level provide information regarding parental rights and procedural safeguards under IDEA to families of infants and toddlers who are IDEA Part C eligible and are being served by their agency.
8. Each Participating Agency shall ensure that its services providers, as appropriate, submit data to the lead agency (DOE) on an annual basis to fulfill the requirements of IDEA and its accompanying Federal Regulations for submission of the December 1 Child Count to the U.S. Department of Education/Office of Special Education Programs.
9. Each Participating Agency, pursuant to individual agreements with the lead agency, shall assist the lead agency (DOE) in facilitating the monitoring of early intervention programs and services to ensure quality and compliance with IDEA and federal and state regulations for services provided to infants, toddlers, and families that are Part C eligible. *34 CFR §303.501(a).* Each Participating Agency shall incorporate IDEA Part C standards into their monitoring process to ensure that their programs, providers, and contract agencies are in compliance with IDEA. DOE, as lead agency, shall receive a copy of each Participating Agency's monitoring instrument and monitor its format to ensure compliance. DOE shall maintain the option to go on-site with each Participating Agency's monitoring team or to review the agency's monitoring report to fulfill DOE's early intervention system monitoring obligations under IDEA Part C. DOE also has the discretion to follow up with the programs,

providers, and contract agencies to ensure the correction of any deficiencies and enforce the requirements of IDEA. *34 CFR §303.501(b)*.

B. Referral and Intake

1. Each Participating Agency shall contribute to the development and implementation of a unified system of developmental screening and referral for infants and toddlers birth to three. In order to facilitate referrals and developmental screenings, each Participating Agency shall provide, as appropriate, training and technical assistance to primary referral sources (hospitals-including prenatal and post-natal care facilities, physicians, parents, child care programs, LEAs, public health facilities, and other health care and social service providers) who are required to refer any infant or toddler they suspect is experiencing developmental delay(s) to their local TEIS Point of Entry within two (2) business days after examining or observing the infant or toddler. *34 CFR §303.321*.
2. DOE, in conjunction with TEIS, shall develop and disseminate Part C evaluation procedures and requirements to the Participating Agencies and potential providers and evaluators. DOE/TEIS will train or provide training to evaluators and providers to use the state's eligibility criteria, as outlined in the State's Early Intervention Plan. DOE/TEIS shall also implement uniform procedures for documenting results of the evaluations and assessments for the IFSP Team. Supervision and monitoring activities conducted by DOE/TEIS will ensure timely evaluations and assessments of potentially eligible infants and toddlers.
3. When a Participating Agency finds, suspects, or receives a referral from a primary referral source, the Participating Agency or their agent shall forward that referral immediately to the local TEIS Point of Entry or assign a Service Coordinator to begin a multidisciplinary evaluation process to determine the infant or toddler's eligibility. The multidisciplinary evaluation process must include a minimum of two (2) disciplines. If the agency does not have the capacity to fulfill the responsibility of service coordination and/or arranging for an appropriate eligibility evaluation, that agency will immediately refer the infant or toddler and family to their local district office of TEIS. In every instance, the receiving agency will notify the TEIS district office of all infants and toddlers who are or potentially are Part C eligible.
4. The Service Coordinator will access the evaluation(s) needed for each infant or toddler through the appropriate Participating Agencies as required in IDEA Part C. Each Participating Agency will work collaboratively to ensure the availability of providers to evaluate each infant or toddler suspected to be in need of early intervention services utilizing the state's eligibility criteria promulgated in the Early Intervention State Plan. The providers will evaluate the infant or toddler in all developmental areas, such as adaptive skills, physical (including vision and hearing) development, communication skills, social/emotional development, and cognition. The multidisciplinary evaluation process must be completed and an IFSP developed within forty-five (45) calendar days from the date of receipt of the referral by the primary referral source if the infant or toddler is found to be IDEA eligible. *34 CFR §303.321(e)*. Early intervention services and evaluations must be provided within a reasonable time period. Therefore, in order to ensure that evaluations and early intervention services are provided in a timely and efficient manner, DOE/TEIS may contract with appropriate providers or provide the needed evaluations and/or services itself pending reimbursement from the agency that has ultimate responsibility for the payment or in accordance with the payor of last resort.

requirements. *34 CFR §303.527(b)*. In order to receive reimbursement from TennCare, the service provider must be a TennCare provider.

C. Provision of Services

1. Early intervention services must be provided in collaboration with parents to meet the developmental needs of the infant or toddler. Qualified personnel, under public supervision, and in accordance with a current IFSP shall provide these services. Early intervention services shall be provided at no cost to parents unless a system of sliding fees has been implemented by the Participating Agency or the Lead Agency (DOE). *34 CFR §303.521*. The use of private insurance must be voluntary and consented to in writing by the parents. This written consent shall be obtained by a representative of the local TEIS Point of Entry. If a parent consents to access private insurance for early intervention services, Part C funds may be used to pay the family's copayment assessed by the insurance company. Each Participating Agency shall promote the provision of early intervention services to infants and toddlers to the greatest extent appropriate, in natural environments, including the home and community settings in which infants and toddlers without disabilities participate. *34 CFR §303.12 (a),(b)*.
2. Once an infant or toddler has been determined to be eligible for early intervention services, the IFSP Team will meet to develop a comprehensive plan of early intervention services. The IFSP Team will include the service coordinator, the infant or toddler's parents and other family members, as requested by the parent, an advocate or person outside the family, if the parent requests his/her participation, person(s) directly involved in conducting the evaluations and assessments, and persons from the Participating Agencies who will be providing services to the infant, toddler or family, as appropriate. *34 CFR §303.343*. The IFSP team will, with concurrence of the family, designate a Service Coordinator. The Service Coordinator may be the service coordinator who was initially assigned to the infant or toddler during the evaluation process or it may be someone different. The Service Coordinator shall be from the agency most relevant to the needs of the infant or toddler and family to ensure the implementation of the IFSP in compliance with IDEA Part C. *34 CFR §303.344(g)*. The Service Coordinator shall be responsible for coordinating any additional evaluations and assessments, as necessary; facilitating the IFSP meeting and development of the IFSP; coordinating with medical and health providers; and coordinating and monitoring the delivery of the services indicated in the IFSP.
3. DOE, with the assistance of the other Participating Agencies, shall provide training and technical assistance to Service Coordinators to assist them in performing the requirements of service coordination particularly facilitating the interaction between families and service providers. DOE will establish a technical assistance system to support service coordinators and service providers. DOE is also responsible for monitoring service coordination.
4. In the IFSP, the payor and the provider of each service will be designated as well as the frequency, intensity, and method of delivering each service. *34 CFR §303.340*. Services will be delivered in a family-centered manner. This includes allowing and encouraging full participation of the family in the planning and implementation of early intervention services and to the greatest extent appropriate, providing services in natural environments and in a manner which incorporates those services into the family's normal lifestyle and routines.

5. Early intervention services, as defined in IDEA Part C and this Agreement, shall be available to infants and toddlers who are IDEA eligible as determined appropriate by the IFSP Team. In addition to meeting the eligibility requirements of IDEA, an infant or toddler must also meet the eligibility requirements of the individual agencies to receive services from that agency.
6. The Service Coordinator shall ensure that transition planning begins no later than the toddler's second birthday. With parental consent, the service coordinator shall refer the toddler to the LEA at age two (2) and arrange for a transition conference no later than ninety (90) days prior to the toddler's third birthday. *34 CFR §303.344(h)*. For toddlers who are located and determined to be eligible for early intervention services through TEIS after the age of two (2), a written transition plan shall be included in the initial IFSP. Families will be included in all aspects of transition planning. When a toddler turns age three (3), an IEP must have been developed. In lieu of an IEP, an IFSP, developed in accordance with Part C with appropriate modifications to meet Part B requirements, may be used with the concurrence of the parent. In either case, the IEP or IFSP must be developed by the toddler's third birthday.
7. Each Participating Agency shall support the interdepartmental exchange of information as appropriate and in accordance with IDEA, and all other federal and state laws and regulations regarding confidentiality. DOE has developed an authorization form for the procurement and/or release of a infant or toddler's confidential records to assist in the effective provision of early intervention services. The designated Service Coordinator will ensure that informed consent is obtained from the family before any information is shared. The family may revoke the consent at any time. All information will be released to the family's designated Service Coordinator who shall compile and maintain a complete service file for the child and family. *See Attachment 4 - Early Intervention Release Form.*

D. Tennessee Department of Education

1. DOE has been designated by the Governor as Lead Agency for the State's Early Intervention System mandated by IDEA. *34 CFR §303.500*. Therefore, DOE shall pursue collaborative strategies with all other Participating Agencies that are part of the early intervention system. DOE, as lead agency, shall:
 - a. Promulgate standards for early intervention service provision;
 - b. Ensure that IDEA Part C funds are not used to replace or supplant any activities required under any other State and Federal program. *34 CFR §303.527(a)*;
 - c. Provide technical assistance to Participating Agencies, service providers, and contract agencies that provide early intervention services to ensure compliance with the provisions of IDEA Part C. *34 CFR §303.501 (b)(3)*;
 - d. Monitor all early intervention programs and services provided to infants and toddlers and their families that are Part C eligible whether or not they are supported by IDEA Part C funds. *34 CFR §303.501 (b)(1)*; and
 - e. Ensure that disputes regarding payment or provision of services are resolved in a timely manner.
2. In addition to its responsibilities as lead agency, DOE shall provide and pay for early intervention services documented on the family's IFSP for which there is no other responsible payor. DOE's responsibility will be limited to the services specified under IDEA. Part C funds

will not be utilized for payment for any service which is considered experimental in nature. *34 CFR §303.527.*

3. When a family consents to accessing its private insurance for early intervention services, DOE will utilize Part C funds to cover deductibles and copayments to ensure that the services are provided at no cost to the family unless DOE establishes a system of sliding fees. If a TennCare enrollee is assessed a copayment, the LEA may pay that copayment. DOE funds cannot be used to supplement payment for services covered by any other program supported by federal, state, or local funds. *34 CFR §303.527 (a)*
4. When a family declines the use of private insurance for early intervention services indicated on the IFSP for which there is no other responsible payor, DOE will secure the service(s), via the local TEIS office, from a provider who has agreed to provide the service in a manner and cost rate established by DOE. DOE shall assume the costs of these services only if it is in accordance with the payor of last resort provisions of IDEA Part C and appropriately documented in a current IFSP. *34 CFR §303.527(a).*

E. Tennessee Department of Health

1. Department of Health (DOH) programs that may have infants or toddlers in need of early intervention services include the Maternal and Child Health (MCH) Title V programs of Children's Special Services (CSS), Healthy Start, HUG, WIC, and child health EPSDT services. Other DOH programs include Traumatic Brain Injury, Hemophilia, Ryan White, and Renal. DOH services are not an entitlement program.
2. DOH ensures that department personnel in child health programs shall be trained to make appropriate referrals for infants and toddlers potentially in need of early intervention related services. DOH shall also provide enrolled families and staff with information regarding Child Find, early intervention services and the IFSP process.
3. DOH programs, that provide services to infants and toddlers birth to 3 years of age identified with a developmental delay and IDEA Part C eligible, will appropriately document the type and amount of service and/or reimbursement provided for the infant, toddler or family as determined by the IFSP. The DOH program representative or authorized representative shall participate on the IFSP team to assist in the process to determine the amount and type of service to be provided or reimbursed by the DOH program and to assist in the process to determine the lead service coordinator. All services provided or reimbursed must meet the CSS program rules and regulations, scope of service and policy.
4. Payment for an early intervention service which is determined necessary by the IFSP team that is appropriately documented on the family's IFSP, and is a service for which a child and family are eligible under MCH or any other DOH programs will be the financial responsibility of DOH.
5. CSS provides reimbursement for medical services for infants or toddlers who meet financial and diagnostic eligibility guidelines. CSS may provide services that have been denied by, or are not covered by, other third party payors but that are considered to be "medically necessary" by the CSS program and the child's provider. Care Coordination services are provided to children who meet the diagnostic eligibility guidelines and may be limited by CSS funding or

staff availability. The CSS program does not provide early intervention services other than those related to medical treatment, audiological assessment, physical therapy, occupational therapy, speech-language therapy, therapies, limited DME, and medications. CSS is not an entitlement program.

F. Bureau of TennCare

1. TennCare contracts with MCOs to provide medical care through networks of subcontracted health providers. MCOs are paired with BHOs to create access to a network of providers for enrollees in need of mental health and substance abuse services. TennCare monitors MCOs and BHOs to ensure that they are in compliance with TennCare Rules and are providing accessible in-network providers to TennCare enrollees.
2. TennCare shall perform TennCare eligibility determinations for children who apply for TennCare and conduct EPSDT outreach to help TennCare enrollees receive medically necessary care consistent with *John B. Consent Decree* at pp. 15-18.
3. TennCare is responsible for providing EPSDT services for all children who are TennCare enrollees. EPSDT services include: (a) periodic well-child screenings in accordance with the recommendations of the American Academy of Pediatrics; (b) medically necessary health and behavioral health diagnostic services; and (c) medically necessary health and behavioral health treatment services. EPSDT treatment services include “such other necessary health care, diagnostic services, treatment and other measures [described in §1396d(a)] . . . to correct or to ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan.” *42 USC §1396d(r)(5); John B. Consent Decree at p. 5.* EPSDT services are based on the individual child’s medical, developmental, and behavioral health needs. No prior authorization by the MCO is needed for a screen conducted by a PCP, and the MCO will provide all medically necessary covered services regardless of whether or not the need for such services was identified by a provider who received prior authorization or by an in-network provider. *John B. Consent Decree at p. 21.* TennCare (including its contractors, the MCOs and BHOs) cannot impose limitations on EPSDT services other than medical necessity. This means that the state cannot set arbitrary limits of duration, scope, or cost of services under EPSDT. *John B. Consent Decree at p. 33.* The MCOs and BHOs have the discretion to require that their network providers deliver TennCare covered services, as long as the networks are sufficient in size and scope to meet the access standards of the MCO/BHO’s contract with the state.
4. Any encounter with a health professional practicing within the scope of his/her practice is an interperiodic screen. Any person such as an educator, parent, or health professional who suspects a health problem may refer a child for an interperiodic screen. An interperiodic screen does not have to include any screening elements required for a periodic screen. No prior MCO authorization is required for an interperiodic screen, and the MCO shall provide all medically necessary covered services identified by the interperiodic screen. *John B. Consent Decree at p. 23.*
5. The child’s MCO will be responsible for identifying whether or not the child’s EPSDT screenings are up-to-date and shall be responsible for providing screenings as needed. These screens shall be provided by the child’s PCP under contract with the MCO. When it is suspected that a TennCare enrolled child may have a particular medical or behavioral health

problem and the child is up-to-date on his EPSDT screenings, the child should be referred to the child's PCP for an EPSDT interperiodic screen. The PCP will make recommendations to the MCO/BHO if he/she believes there is a need for additional diagnosis and/or treatment that is medically necessary. *John B. Consent Decree at p. 38.*

6. TennCare will provide all covered medically necessary services, including durable medical equipment, for all children who are TennCare enrollees, regardless of whether or not these children are IDEA eligible. TennCare shall provide transportation to and from appointments for services covered by TennCare when the enrollee does not have access to transportation services. *John B. Consent Decree at pp. 41-2.* TennCare may not disqualify an eligible service for TennCare reimbursement because that service is provided in accord with an IFSP. *34 CFR §303.527(c).* MCOs and BHOs have the discretion to require that covered services be delivered by providers in their networks, within the access standards required in their contracts with the state.
7. Emergency medical services are available twenty-four (24) hours per day, seven (7) days per week for TennCare enrollees. Coverage of emergency medical services is not subject to prior authorization by the MCO. *Tenn.Rule 1200-13-12-.04(4)*
8. Each TennCare MCO and BHO is responsible for the management of medical care and continuity of care for all its TennCare enrollees including children who are IDEA eligible. Specific responsibilities include performance of reasonable preventive health case management services, appropriate referral and scheduling assistance for enrollees needing specialty health care services, monitoring of enrollees with ongoing medical conditions, coordinated hospital and/or institutional discharge planning that includes post-discharge care as appropriate, maintenance of an internal tracking system which identifies the current preventive service screening status and pending due dates for each enrollee, and authorization of out-of-plan or out-of-state services which are medically necessary due to an emergency. *Contractor's Risk Agreement between TennCare and MCO September, 1995.* In addition, to coordinate EPSDT screens and services, each TennCare MCO/BHO shall provide case management services by assisting children for whom case management is medically necessary. *John B. Consent Decree at p. 38.* The case management provided shall center on the process of collecting information on the health needs of the child, making and following up on referrals as necessary, and activating the examination/diagnosis/treatment loop. *Id. at pp. 38-9.* The case management services must meet the needs of the child and cannot be used exclusively as a tool for prior authorization. *Id. at p. 39.*
9. TennCare shall coordinate the delivery of covered health and behavioral health services with services offered by other state health agencies and shall attempt to make use of other public health, mental health, and educational programs and related programs such as Head Start to ensure an effective child health program. MCOs are responsible for requesting the IFSPs of enrollees who they know are children who are IDEA eligible and enrolled in each MCO. TennCare has developed a release form to provide to TEIS that a parent may use to consent to the release of education records consistent with IDEA, FERPA and all applicable state and federal regulations. TEIS or the designated service coordinator is responsible for sharing the IFSP with the PCP after obtaining appropriate parental consent. *See Attachment 3 - TennCare Release Form.* MCOs shall accept the IFSP indication of a medical problem or shall have the child appropriately tested. Coordination by the MCO and service coordinator should be calculated to reduce gaps and overlaps in services. *John B. Consent Decree p. 42.*

10. If a child is a TennCare enrollee and early intervention services are provided by TEIS, TEIS may seek reimbursement for these services if it or its providers have a provider contract with the MCO or BHO consistent with the policies and procedures adopted by TennCare, DOE, and this Agreement.
11. The Solutions Unit, as designated by TennCare, will review all TennCare appeals by TennCare enrollees regarding the denial, delay, termination, suspension, or reduction of medical assistance by the MCO or BHO. Appeals will be handled in accordance with procedures outlined in applicable State rules and as required by the *Grier* revised Consent Decree. *TennRule 1200-13-12-.11*.

G. Tennessee Department of Children's Services

1. No infant or toddler shall be denied early intervention services because of his/her status as a child in DCS custody. A DCS representative shall be present at the IFSP Team meeting for all children who are IDEA eligible in state custody.
2. DCS ensures that department personnel (i.e. case managers) have an opportunity to be trained to make appropriate referrals for infants or toddlers potentially in need of early intervention services. DCS shall also provide foster parents and DCS staff with information regarding Child Find, early intervention services, and the IFSP process. DCS does not provide any early intervention services. However, an agency representative shall be present at an IFSP Team meeting and facilitate the coordination of services in the IFSP and the infant or toddler's DCS Permanency Plan.

H. Tennessee Department of Mental Health and Developmental Disabilities

1. TDMHDD contracts with outpatient agencies to provide Regional Intervention Program (RIP) services. These RIP sites provide services for preschoolers and their families that meet the RIP eligibility requirements. Participation in RIP is not an entitlement and is subject to RIP eligibility requirements not IDEA Part C requirements.
2. RIP provides intensive parent training for families with preschool age children where there is a concern about their behavior.
3. TDMHDD shall ensure that personnel in the department, the Community Mental Health Centers (CMHC), and RIP sites have an opportunity to be trained to make appropriate referrals for infants and toddlers potentially in need of early intervention services. TDMHDD shall also provide staff with information regarding Child Find, early intervention services, and the IFSP process. TDMHDD encourages personnel at the CMHC and RIP sites to attend the IFSP meeting of an infant or toddler who is or may be eligible to receive RIP services and help facilitate the coordination of services.

I. Tennessee Division of Mental Retardation Services

1. The Division of Mental Retardation (DMRS) provides services for infants and toddlers who are eligible through the Home and Community Based Services (HCBS) waiver and state funded

services available on the basis of state appropriations. Access into the waiver is not guaranteed and is subject to funds available through state appropriations. Services funded by state appropriations are provided to those who are eligible in proportion to the availability of funds. *See Article 4 Section E - DMRS.*

2. DMRS funds a variety of early intervention services for infants and toddlers and their families through local contract agencies. Community based early intervention services are funded through DMRS and provided pursuant to contracts between the community organization and the State of Tennessee. DMRS services are not an entitlement program; therefore, payment for services will be based on the scope of services funded through the local contractor and space availability. *See Article 4 Section E - DMRS.*
3. Payment for an early intervention service that can be provided by DMRS or one of its contract providers and is appropriately documented on the family's IFSP is made on the basis of availability of state appropriations.
4. Early intervention services shall be provided at no cost to parents unless a system of sliding fees has been implemented by the Lead Agency (DOE). *34 CFR §303.521.*
5. Appropriate staff from the contract agency providing early intervention services will assist in developing a comprehensive IFSP. Services assigned to the contract agency will be provided in a family-centered manner.
6. The contract agency will participate in the development of an appropriate transition plan when the child turns two (2) years of age. The agency in cooperation with the Service Coordinator will ensure that an IEP is developed by the child's third birthday.

J. Resolution Mechanism

1. Any individual or organization may file a written complaint with DOE to resolve any systemic issues regarding the provision of early intervention services. *34 CFR §303.510(a)(1)(i).* DOE will investigate all IDEA Part C administrative complaints in the same manner as it does for Part B administrative complaints. *See Article 4 Section A - DOE, 34 CFR §303.512(a) & (b).* The written complaint must be signed and include a statement that the Participating Agency or any funded recipient has violated a requirement of IDEA Part C and must provide facts to support the complaint. *34 CFR §303.511.* The alleged violation must have occurred not more than one (1) year before the date that the complaint is received by DOE unless (1) the violation continues for that infant or toddler or other infants or toddlers; or (2) the complainant is requesting reimbursement or corrective action for a violation that occurred not more than three (3) years prior to the date of receipt of the complaint by DOE. *34 CFR §303.511(b).*
2. DOE, as lead agency, shall ensure that all due process hearings requested by parents to resolve issues of IDEA eligibility, evaluation, placement, or the provision of appropriate early intervention services will be conducted in accordance with all applicable state and federal statutes and regulations. DOE will maintain a list of state hearing officers and their qualifications. DOE shall appoint hearing officers. All due process hearings under IDEA shall be conducted consistently with state and federal law. *34 CFR §303.420.*

3. Upon request and with the consent of both the parent and the agency providing the early intervention service in dispute, DOE, as lead agency, will assign a mediator to resolve disputes arising under IDEA. DOE will appoint mediators and provide them with training in mediation and special education law. Consent to mediation by the parent of a infant or toddler who is IDEA Part C eligible is voluntary and will not delay or deny a parent's right to a due process hearing nor shall it deny parents any other rights afforded them under IDEA Part C. DOE shall bear the cost of the mediation process. Consistent with IDEA, all discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process are required to sign a confidentiality pledge prior to the commencement of the process. An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement. *34 CFR §303.419.*
4. During the pendency of any proceeding involving a complaint under Part C, unless the public agency and the parents otherwise agree, the infant or toddler must continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial services, the infant or toddler must receive those services in the IFSP that are not in dispute. *34 CFR §303.425.*
5. If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60 calendar day timeline required for resolution of administrative complaints. *34 CFR §303.512(c)(1). See also paragraph one.*
6. If an issue is raised in a complaint that has been decided previously in a due process hearing involving the same parties, the previous hearing decision is binding. A complaint alleging that a public agency or private service provider failed to implement a due process decision must be resolved by the lead agency. *34 CFR §303.512(c)(2).*
7. Procedures for IDEA Part C dispute resolution permit agencies to resolve intra-agency disputes using their own procedures so long as resolution is accomplished in a timely manner. *34 CFR §303.523(2)(i).* DOE, as lead agency, is responsible for ensuring disputes are resolved in a timely manner. Therefore, when an agency is unable to resolve an intra-agency dispute in a timely manner, DOE, as lead agency, shall refer the issue to the informal resolution committee which will resolve the issue in accord with the procedures described in Article 6 of this Agreement. *34 CFR §§303.523.* DOE shall implement procedures to ensure services are provided in a timely manner pending the resolution of disputes among Participating Agencies or service providers by seeing that existing services are not disrupted or if initial services are in dispute that all other services other than the disputed one(s) are provided. *34 CFR §303.525.*
8. If there is a conflict between or among Participating Agencies (i.e. an interagency dispute) regarding the provision of or the payment for early intervention services, the procedure set forth in Article 6 of this Agreement shall be followed.

Article Six

Interagency Dispute Resolution Procedures

1. If any Participating Agency has any disagreement related to the payment for special education and related services, service responsibilities, or other matters related to this Interagency Agreement, the Participating Agencies agree to implement the following procedures. These procedures do not apply to individual administrative complaints initiated by a parent. Individual administrative complaints are resolved in accord with the procedures established by each agency as indicated in this Agreement. *See Articles 4 and 5.*
2. If an interagency dispute arises, the Participating Agencies agree to meet as a Resolution Committee whose purpose is to resolve disputes under this Agreement informally. This process can be initiated by any Participating Agency. If any entity other than the agencies participating in this Agreement has an issue with interagency implications, it may refer the issue by written notice to the agency with which it contracts or who provides oversight to its programs. The Participating Agency will evaluate the issue and refer the written notice to the Assistant Commissioner of Special Education for discussion by the Resolution Committee as appropriate. Each Participating Agency shall designate a representative and an alternate to serve on the Resolution Committee. The committee will only meet when a dispute arises. Each Participating Agency shall ensure that its representative or alternate participates in the Resolution Committee's deliberations even if the dispute at issue does not directly pertain to services provided by that Participating Agency. The committee shall meet as soon as practicable once the dispute arises and shall attempt to resolve the dispute in a timely manner. If a resolution is achieved, the committee shall write and distribute its findings of fact and conclusions. If the dispute cannot be resolved within fifteen (15) days of the referral, the issue shall be forwarded to the Commissioners Task Force
3. If an interagency dispute cannot be resolved informally in a timely manner, the aggrieved agency shall submit a written complaint to the Assistant Commissioner of the Division of Special Education. The complaint must include: 1) the regulation, policy, or requirement involved in the dispute; 2) the specific issue(s) needing resolution; 3) the prior actions taken to resolve this issue including a copy of the written findings of fact and conclusions of the informal Resolution Committee; and 4) any other information relevant to the complaint including but not limited to the child's IEP or IFSP, the relevant evaluations and assessments of the child, and all other supporting documentation. The Assistant Commissioner of the Division of Special Education shall forward a copy of the complaint to the members of the Commissioners Task Force (whose members include the Commissioners of the Departments of Education, Finance and Administration, Health, Human Services, Children's Services, and Mental Health and Developmental Disabilities, the Assistant Commissioner for Mental Retardation, and the Director of TennCare or their designees) within ten (10) business days from receipt of the complaint. Representatives of the Participating Agencies who serve on the Resolution Committee may not serve as the designee to the Commissioners Task Force. The Commissioners Task Force will meet within fifteen (15) business days from the receipt of the complaint by the Task Force. The Commissioner's Task Force will consider the written complaint including all documents submitted and oral arguments from the affected agencies. The Commissioners Task Force shall render a written decision within ten (10) business days after the meeting and distribute it to each Participating Agency. The Participating Agencies shall be responsible for ensuring that the written findings and conclusions are distributed to all offices, divisions, bureaus, units, and programs that may be affected by the findings. The final determination of the Commissioners Task Force shall be binding upon all the agencies. However, the decisions of the Task Force shall not be binding on future complaints but may be considered persuasive authority by the Task Force.

4. While the dispute is pending, the Commissioners Task Force may elect to assign financial responsibility to the agency currently providing the service at issue or if the service has not begun, the Task Force shall allocate resources from the Participating Agencies to provide the service, as appropriate. Once the dispute has been resolved, if the Commissioners Task Force determines that the assignment of financial responsibility was inappropriately made, it shall reassign the responsibility to the appropriate agency. The agency that was originally assigned financial responsibility may seek reimbursement for any expenditures incurred. Each Participating Agency shall establish such policies and procedures as are necessary to assure that any fiscal obligation assessed to it under this Agreement is timely paid or reimbursed.
5. A Participating Agency may refer a general policy question to the Commissioners Task Force for its review and recommendations. The Task Force shall make a policy determination in accord with the applicable state and federal laws and issue written findings that will be distributed to each Participating Agency. The Participating Agencies shall be responsible for ensuring that the written findings are distributed to all offices, divisions, bureaus, units and programs that may be affected by the findings.

Article Seven

Records

1. Pursuant to IDEA, FERPA, and all applicable state and federal laws, the following provisions will apply to the confidentiality and disclosure of education and medical records of IDEA eligible children under this Agreement.
 - a. Consistent with state statute, records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution, to the public or to any Participating Agency, except those agencies authorized by the educational institution to conduct specific research, testing, evaluation, provide services or otherwise authorized by the governing board of the institution, LEA, or agency without the consent of the student involved or the parent or guardian of a minor student, except as otherwise provided by law or regulation and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, DOE, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and directory information such as information relating only to the individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed. However, if it is disclosed, the directory information may not be linked with other non-directory information such as IDEA eligibility. *TCA§10-7-504 (a)(4)*.
 - b. Each Participating Agency or contractor which has access to a child with a disabilities education records must protect personally identifiable information at the following stages: collection, storage, disclosure, and destruction. One official in each Participating Agency shall be assigned responsibility for ensuring the confidentiality of all personally identifiable information. All Participating Agencies shall train or provide information to persons

collecting or using personally identifiable information on state law and procedures, IDEA, and FERPA requirements regarding the confidentiality of student education records. LEAs shall maintain, for public inspection, a current listing of all persons and their positions who have access to personally identifiable information within the Participating Agency. *34 CFR §300.572*.

- c. Parents and legal guardians shall have complete access to their child's education records. Prior parental consent is required for disclosure of all personally identifiable information in a student's education record unless: 1) the disclosure meets the requirements of one of the FERPA exceptions enumerated in 34 CFR §99.31(a); or 2) if the disclosure is to an outside third party performing professional, business, and related services as a part of the operations of the educational agency or institution and has a legitimate educational interest in the information.
- d. In order to have proper consent from a parent for the release of education records, the consent document must include the parent's: signature, date, listing of specific records to be disclosed, the purpose for the disclosure, and the parties or class of parties to which the disclosure will be made.
- e. For the purposes of granting consent to release educational records or personally identifiable information, the rights of a parent are transferred to the student when the student turns eighteen (18) years old unless the child has been declared judicially incompetent under applicable state law. *34 CFR §300.517*.

2. Consistent with IDEA, FERPA, and all applicable state and federal regulations, an educational agency or institution shall comply with the following procedures regarding the disclosure of education records:

- a. An educational agency or institution may disclose personally identifiable information from an education record of a student without parental consent if the disclosure meets one of the conditions set forth in 34 CFR §99.31(a) - FERPA Disclosure Exceptions. Although consent is not required for disclosure under one of the FERPA exceptions, FERPA generally does require the educational agency or institution to make a reasonable effort to notify the parents of the child that the information will be disclosed (i.e. in response to a subpoena). The parents shall have an opportunity to pursue protective action if the parent believes the disclosure is unwarranted. However, prior parental notification is not required prior to disclosure in response to a federal grand jury or law enforcement subpoena. FERPA does not compel or forbid the disclosure of education records in 34 CFR §99.31(a), but the child's right to privacy in the education records is a compelling state interest, and as such, the court places a high burden on the proponent of disclosure. A LEA may impose restrictions on the disclosure of educational records to another LEA or Participating Agency.
- b. An educational agency or institution may disclose personally identifiable information to outside persons performing professional, business, and related services as part of the operations of the institutions if the educational agency or institution has determined that the person has a legitimate educational interest in the information. The privacy protections and confidentiality requirements imposed on the educational agency or institution extend to records and materials maintained by persons acting for the educational agency or institution such as an attorney, accountant or consultant. Improper disclosure by any individual receiving information under this provision will result in the denial of access to educational information by that individual for at least five years. *20 USC §1232g(b)(4)(B)*.

- c. The educational agency or institution may disclose education records to DCS without parental consent if the child has been placed in DCS custody and will be attending a school administered by DCS. While in the possession of a law enforcement unit, educational records do not lose their status as such.
 - d. Pursuant to IDEA, an educational agency or institution, when reporting a crime committed by a child with a disability in school to the appropriate authorities, shall transmit copies of the child's special education and disciplinary records. However, the transmittal of records shall only be to the extent allowed under FERPA. Disciplinary records are education records for the purposes of FERPA. *34 CFR §300.529(b)*.
 - e. An educational agency or institution shall disclose education records to a due process hearing officer without parental consent if the disclosure is made in the course of the due process proceeding and not prior to it.
 - f. An educational agency or institution shall document and record to whom and for what purpose access to records was allowed. This record shall not include parents and authorized employees of the educational agency or institution. *34 CFR §300.565*.
3. Consistent with IDEA, FERPA, and all applicable state and federal regulations, student medical records shall be maintained in the following manner:
- a. When maintained by an educational agency or institution for IDEA purposes, EPSDT records shall be considered educational records. An educational agency or institution shall not elect to categorize these records as anything else. If maintained by an educational agency or institution, school health and medical records shall be regarded as confidential education records. School health and medical records, as education records, include school performed screenings, exams, or assistance in the school health office; copies of medical or health related records submitted to schools when they are in the possession of the school; and receipt of services under IDEA.
 - b. The medical records of patients in state, county, and municipal hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, county, or municipality shall be treated as confidential and shall not be open for inspection by members of the public. *TCA §10-7-504*. The name, address, and other identifying information of a patient entering and receiving care at a licensed health care facility shall not be divulged unless the disclosure meets one of the enumerated exceptions in TCA §68-11-1503 (Medical Records - Confidentiality).
 - c. An educational agency or institute may not disclose personally identifiable information from a student's education record to TennCare without parental consent. Further, educational agencies or institutions may not provide TennCare with a list of all students who are receiving special education and related services to determine who is a TennCare enrollee. *20 USC §1232g(b)(1)*.
4. Confidential education records shall be destroyed consistent with IDEA, FERPA and all applicable state and federal laws.

Article Eight

Amendments

This Agreement may be amended in writing upon mutual consent of all the Participating Agencies.

Article Nine

Term of Agreement

This agreement is effective upon execution by all Participating Agencies and shall remain in effect until it is terminated by any Participating Agency upon written thirty (30) day notice to the other Participating Agencies.

Article Ten

Waiver

A failure by any Participating Agency to exercise its rights under this Agreement shall not preclude that agency from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Participating Agency and attached to the original Agreement.

Article Eleven

Severability

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirement of applicable law and the fundamental purpose of this Agreement, and to this end the provision of this Agreement are declared to be severable.

Article Twelve

Integration

This Agreement contains all the terms and conditions agreed upon by the Participating Agencies. No other understandings oral or otherwise regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Participating Agencies.

Article Thirteen

Quality Review

Each Participating Agency shall designate liaisons who will meet annually to review the Agreement to ensure that the Agreement is meeting the needs of the Participating Agencies and recommend any changes or modifications which would benefit any of the Participating Agencies and or children with disabilities and their families. Personnel from the Participating Agencies will initiate a quality review of the services and conditions set forth in this Agreement. The Participating Agencies agree to review this Agreement one year from the date of its implementation and thereafter as needed to make such changes as they deem desirable.

Article Fourteen

Assignment

The services to be provided under this Agreement and any claim arising hereunder shall not be assigned or delegated by any Participating Agency, in whole or in part, without the express prior written consent of the other Participating Agencies which consent shall not be unreasonably withheld.

Article Fifteen

Construction

This Agreement is in no way to be construed as limiting or diminishing the responsibilities of the Participating Agencies under federal or state law. In all instances, this Agreement is to be construed to comply with the requirements of federal and state law. This Agreement shall not be construed to create rights in any third parties.

APPROVED BY:


Vernon Coffey, Commissioner
Department of Education

10/18/00
Date


Mark E. Reynolds, Deputy Commissioner
Department of Finance and Administration
Bureau of TennCare

10/25/00
Date


C. Warren Neel, Commissioner
Department of Finance and Administration

10-27-00
Date


Barbara Brent, Deputy Commissioner
Department of Finance and Administration
Division of Mental Retardation Services

10/19/00
Date

George W. Hattaway
George W. Hattaway, Commissioner
Department of Children's Services

10/24/00
Date

Natasha K. Metcalf
Natasha K. Metcalf, Commissioner
Department of Human Services

Date

Fredia Wadley
Fredia Wadley, Commissioner
Department of Health

10-25-00
Date

Elisabeth Rukeyser
Elisabeth Rukeyser, Commissioner
Department of Mental Health and
Developmental Disabilities

10/20/00
Date

EFFECTIVE DATE: November 1, 2000

Attachment One

Acronyms

BHO	Behavioral Health Organization
CIT	Children's Information in Tennessee
CMHC	Community Mental Health Center
CSS	Children's Special Services
DCS	Tennessee Department of Children's Services
DHS/DRS	Tennessee Department of Human Services/Division of Rehabilitation Services
DMRS	Tennessee Division of Mental Retardation Services
DOE	Tennessee Department of Education
DOH	Tennessee Department of Health
EPSDT	Early Periodic Screening, Diagnosis and Treatment
FAPE	Free Appropriate Public Education
FERPA	Family Educational Rights and Privacy Act
HCBS waiver	Home and Community Based waiver
ICC	Interagency Coordinating Council
ICF-MR	Intermediate Care Facility - Mental Retardation
IDEA	Individual's with Disabilities Education Act
IEP	Individualized Education Program
IFSP	Individual Family Service Plan
IPE	Individual Plan for Employment
ISC	Independent Support Coordinator
ISP	Individual Support Plan
ITP	Individualized Transition Plan
LEA	Local Educational Agency
MCO	Managed Care Organization
PCP	Primary Care Physician
RIP	Regional Intervention Program
RMHI	Regional Mental Health Institute
SEA	State Educational Agency
TCA	Tennessee Code Annotated
TDH	Tennessee Department of Health
TDFA	Tennessee Department of Finance and Administration
TDMHDD	Tennessee Department of Mental Health and Developmental Disabilities
TEIS	Tennessee Early Intervention System

Attachment Two
TennCare Release Form

TennCare

RELEASE OF INFORMATION FOR INDIVIDUAL EDUCATION PLAN

Please be advised that permission is given for _____
(name of school)
to release information concerning :

Full Name of Child

Social Security Number

I understand that the information released will be in the form of an Individual Education Plan (IEP) for this child, which identifies his/her need to receive medically necessary services in an educational setting. This information will be released to the child's TennCare Managed Care Organization (MCO), TennCare Behavioral Health Organization (BHO), and his/her Primary Care Provider (PCP) so that appropriate services will be provided to this child. Confidentiality of this information is required by contract and will be made available only to those individuals directly concerned with this child's diagnosis, care and treatment.

Parent/Guardian Signature

Date

Witness Signature

Date

Attachment Three
TEIS Release Form

AUTHORIZATION FOR PROCUREMENT AND RELEASE OF INFORMATION FOR
STATE DEPARTMENTS OF HUMAN SERVICES, HEALTH, MENTAL HEALTH AND MENTAL
RETARDATION AND EDUCATION AND RESPECTIVE AGENCIES NAMED BELOW IN THIS DOCUMENT

Name of Child: _____ Date of Birth: _____

Name of Legal Guardian: _____ ID#: _____

Address: _____

(Name of Direct Care Provider)

☐ to obtain from _____ to release to _____ to exchange with _____

(Person or agency) (Phone number)

the following information through written form and/or oral discussion of impressions or recommendations.

Parent initial the appropriate boxes.

- | | |
|---|---|
| <p><input type="checkbox"/> The complete record including:</p> <ul style="list-style-type: none">➤ intake forms➤ progress notes➤ reports➤ assessments/evaluations➤ discharge summary <p><input type="checkbox"/> IFSP/Reviews</p> <p><input type="checkbox"/> Psychological Reports</p> <p><input type="checkbox"/> PT Reports</p> <p><input type="checkbox"/> Other: _____</p> | <p><input type="checkbox"/> OT Reports</p> <p><input type="checkbox"/> Most Recent Neurological</p> <p><input type="checkbox"/> Family Needs Assessment</p> <p><input type="checkbox"/> D/C Summary</p> <p><input type="checkbox"/> Hearing Screening/Evaluation</p> <p><input type="checkbox"/> Vision Screening/Evaluation</p> <p><input type="checkbox"/> Medical Reports</p> <p><input type="checkbox"/> Social History</p> <p><input type="checkbox"/> Immunization Record</p> |
|---|---|

Reason for request _____

Consentor Rights – You have a right to refuse to sign this form. You have the right to refuse to release information to the individual or agency listed above. You have the right to express limitation on the use of the information to be released. The following records may not be released:

All information I hereby authorize to be obtained from this agency will be held strictly confidential and cannot be released without my written consent. I understand these reports may have information on communicable diseases.

Effective one (1) year from date signed or until:

I understand that I may revoke this consent at any time.

(Date)

(Signature of Parent/Legal Guardian)

(Signature of Witness/Title)

No individual shall be denied equal educational opportunity because of his/her color, handicap, religion, marital or parental status, national origin, race or sex. (Revised May 14, 1999)